S. Hrg. 98-659

AMENDING THE MINERAL LEASING ACT OF 1920

HEARING

BEFORE THE

SUBCOMMITTEE ON
ENERGY AND MINERAL RESOURCES

OF THE

COMMITTEE ON
ENERGY AND NATURAL RESOURCES
UNITED STATES SENATE

NINETY-EIGHTH CONGRESS

FIRST SESSION

ON

S. 1634

A BILL TO AMEND THE MINERAL LANDS LEASING ACT OF 1920, AND FOR OTHER PURPOSES

OCTOBER 18, 1983

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AMENDING THE MINERAL LEASING ACT OF 1920

TUESDAY, OCTOBER 18, 1983

U.S. Senate,
Subcommittee on Energy and Mineral Resources,
Committee on Energy and Natural Resources,
Washington, D.C.

The subcommittee met, pursuant to notice at 10 a.m., in room SD–366, Dirksen Office Building, Hon. John Warner, presiding.

Present: Senators Warner, Wallop, Nickles, Hecht, and Johnston.

Also present: Robert L. Terrell, professional staff member; and Linda Mason, professional staff member for the minority.

OPENING STATEMENT OF HON. JOHN W. WARNER, A U.S. SENATOR FROM THE STATE OF VIRGINIA

Senator **Warner**. The subcommittee will hear testimony today on S. 1634, a bill to amend the Mineral Lands Leasing Act of 1920. S. 1634 was introduced on July 18, 1983 by a senior member of this subcommittee, Senator Wallop, for himself and several other Senators.

S. 1634 amends the Mineral Lands Leasing Act of 1920 in three ways:

First, it repeals section 2(a)(2) of the Mineral Lands Leasing Act of 1920 that requires entities holding a lease or leases for Federal coal deposits issued prior to 1976 to be in production in commercial quantities on such lease or leases by 1986. Such entities failing to satisfy this requirement are prohibited from obtaining leases for other leasable minerals under the Mineral Lands Leasing Act of 1920;

To save time I'll put the balance of my statement and a statement from Senator Murkowski and the text of S. 1634 in the record. I'm sure all in attendance know precisely what we're talking about.

[The prepared statements of Senator Warner and Senator Murkowski and the text of S. 1634 follow:]

OPENING STATEMENT
BY
SENATOR JOHN W. WARNER
BEFORE THE
SUBCOMMITTEE ON ENERGY AND MINERAL RESOURCES
OCTOBER 18, 1983

RE: HEARING ON S. 1634, A BILL TO AMEND THE MINERAL LANDS LEASING ACT OF 1920, AND FOR OTHER PURPOSES.

GOOD MORNING. THE SUBCOMMITTEE WILL HEAR TESTIMONY TODAY ON S. 1634, A BILL TO AMEND THE MINERAL LANDS LEASING ACT OF 1920. S. 1634 WAS INTRODUCED ON JULY 18, 1983 BY A SENIOR MEMBER OF THIS SUBCOMMITTEE, SENATOR WALLOP, FOR HIMSELF AND SEVERAL OTHER SENATORS.

S. 1634 AMENDS THE MINERAL LANDS LEASING ACT OF 1920 IN THREE WAYS:

FIRST, IT REPEALS SECTION 2(A)(2) OF THE MINERAL LANDS LEASING ACT OF 1920 THAT REQUIRES ENTITIES HOLDING A LEASE OR LEASES FOR FEDERAL COAL DEPOSITS ISSUED PRIOR TO 1976 TO BE IN PRODUCTION IN COMMERCIAL QUANTITIES ON SUCH LEASE OR LEASES BY 1986. SUCH ENTITIES FAILING TO SATISFY THIS REQUIREMENT ARE PROHIBITED FROM OBTAINING LEASES FOR OTHER LEASABLE MINERALS UNDER THE MINERAL LANDS LEASING ACT OF 1920;

SECOND, IT AMENDS SECTION 2(D)(1) OF THE MINERAL LANDS LEASING ACT OF 1920 BY DELETING THE REQUIREMENT THAT ALL LANDS IN A LOGICAL MINING UNIT BE CONTIGUOUS; AND

THIRD, IT AMENDS SECTION 7(C) OF THE MINERAL LANDS LEASING ACT OF 1920 BY DELETING THE REQUIREMENT THAT A MINING AND RECLAMATION PLAN BE SUBMITTED FOR THE SECRETARY OF INTERIOR'S APPROVAL NOT LATER THAN THREE YEARS FROM THE DATE OF ISSUANCE OF A COAL LEASE.

AS WE ARE ALL AWARE, THE COMMISSION ON FAIR MARKET VALUE - KNOWN AS THE LINOWES COMMISSION - IS NOW STUDYING THE ISSUES OF FAIR MARKET VALUE FOR FEDERAL COAL LEASES. ONE OF THE ELEMENTS IN THEIR REVIEW IS REPEAL OF SECTION III OF THE FEDERAL COAL LEASING ACT AMENDMENTS OF 1976. FOR THIS REASON, I WILL FORWARD A COPY OF THE RECORD OF THIS HEARING TO THE COMMISSION FOR THEIR INFORMATION.

WE IN THE CONGRESS ALSO HAVE A RESPONSIBILITY TO REVIEW THIS ISSUE AND MAKE A RECORD. I DO NOT ANTICIPATE THAT THE SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES WILL MOVE FORWARD WITH S. 1634 UNTIL THE COMMISSION ON FEDERAL COAL LEASING HAS MADE ITS RECOMMENDATIONS.

THE WITNESSES APPEARING BEFORE US TODAY WILL OFFER TESTIMONY TO ASSIST THE MEMBERS OF THIS SUBCOMMITTEE IN UNDERSTANDING THE ISSUES INVOLVED IN AMENDING THE MINERAL LANDS LEASING ACT AS PROVIDED FOR IN S. 1634. I AM ADVISED THAT STATEMENTS WILL BE FORTHCOMING FROM OTHER INTERESTED INDIVIDUALS AND GROUPS FOR INCLUSION IN OUR HEARING RECORD ON THIS SUBJECT. THEREFORE, THE HEARING RECORD WILL BE LEFT OPEN FOR A PERIOD OF TWO WEEKS TO RECEIVE THOSE STATEMENTS.

STATEMENT OF SENATOR FRANK H. MURKOWSKI
ON S. 1634
BEFORE THE SUBCOMMITTEE ON ENERGY AND MINERAL RESOURCES
COMMITTEE ON ENERGY AND NATURAL RESOURCES
U.S. SENATE
OCTOBER 18, 1983

Mr. Chairman, I want to commend you for scheduling these hearings on S. 1634. This bill contains several of the same provisions contained in legislation I introduced in the last Congress. While my bill, S. 2704, was not acted upon due to the limited time we had remaining in the 97th Congress, I am pleased to see that the Subcommittee appreciates the importance of refocusing on the serious problems that exist as a consequence of the Federal Coal Leasing Act Amendments of 1976. I am happy to join Senator Wallop as a cosponsor of S. 1634.

In 1976 the Congress, demonstrating an understandable concern over the low levels of coal production from Federal coal leases, enacted the Federal Coal Leasing Act Amendments of 1976 (FCLAA). That Act ended the preference right leasing system and mandated competitive leasing for all future Federal coal leasing. The Act also established strict production obligations for both existing leases and those issued subsequent to the Act.

Mr. Chairman, speaking with some hindsight, I believe it is clear that at least one provision of the 1976 amendments was ill-advised. Specifically, Section 3 of the FCLAA is punitive and unnecessary. This provision prohibits the issuance of any mineral lease to any firm that has held a Federal coal lease for ten years without producing coal in "commercial quantities." While I concede there may be a sound rationale for terminating such leases, the punitive nature of the Section 3 provision goes way too far. Why, for instance, should a company be prohibited from receiving a Federal oil and gas lease in Alaska if it has failed to produce commercial quantities of coal from a Federal coal lease in Montana?

Section 3 was primarily directed at pre-1976 leases, and new "diligent development" requirements mandated by Section 7 of the FCLAA are being applied to the pre-1976 leases as the terms of the leases are being readjusted over time. This, I believe, is adequate to ensure the diligent development of Federal coal leases.

The other provisions of S. 1634 are also needed to "fine tune" the Federal Coal leasing statutes, and I support them wholeheartedly. One provision would clarify what could constitute acceptable Logical Mining Units (LMU), and the remaining provision would repeal the requirement that an operation and reclamation plan be submitted within three years of the issuance of a lease.

I would like to make one final observation, Mr. Chairman. This legislation is not related to the current controversy over the current Federal coal leasing program. The primary concern of this bill relates to pre-1976 leases, not to the issue of fair market value placed on leases currently being issued. I hope that my colleagues will resist the temptation to link these clearly unrelated issues.

Thank you, Mr. Chairman.

98TH CONGRESS
1ST SESSION

S. 1634

To amend the Mineral Lands Leasing Act of 1920, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 18, 1983

Mr. WALLOP (for himself, Mr. BINGAMAN, Mr. DOMENICI, Mr. HECHT, Mr. MURKOWSKI, Mr. NICKLES, and Mr. SIMPSON) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

---

A BILL

To amend the Mineral Lands Leasing Act of 1920, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, except as otherwise expressly provided, whenever in this Act an amendment is expressed in terms of an amendment to a section or other provision of the Mineral Lands Leasing Act, the reference shall be considered to be made to a section or other provision of the Act of February 25, 1920, entitled "An Act to promote the mining of coal, phosphate, oil, oil shale, gas, and sodium on the public domain", as amended (30 U.S.C. 181 et seq.).

SEC. 2. Section 2(a)(2) (30 U.S.C. 201(a)(2)) of the Mineral Lands Leasing Act is amended by deleting subparagraph (A) in its entirety and redesignating appropriately.

SEC. 3. The last sentence of section 2(d)(1) (30 U.S.C. 202(1)) of the Mineral Lands Leasing Act is amended by striking the comma after "operator" and inserting in lieu thereof "and" and by striking "and be contiguous".

SEC. 4. The first sentence of section 7(c) (30 U.S.C. 207(c)) of the Mineral Lands Leasing Act is amended by striking "and not later than three years after a lease is issued,".

Senator **Warner**. First we'll have Hon. J. Steven Griles, Deputy Assistant Secretary of Land and Water Resources, Department of the Interior.

STATEMENT OF J. STEVEN GRILES, DEPUTY ASSISTANT SECRETARY, LAND AND WATER RESOURCES, DEPARTMENT OF THE INTERIOR

Secretary Griles. Good morning Senator. I would like to submit my prepared testimony for the record and summarize the position of the Department.

First I'd like to thank you, Senator, for allowing me to appear today to talk about what we consider to be an important bill for the future of coal leasing and coal development. Section 2 of the bill would repeal the unprecedented, and we consider, unnecessary requirement of lease holders to relinquish their hold on all Federal leases in order to bid on new ones, or of holding old leases and being disqualified from bidding on new ones.

Without removing this section of the Mineral Leasing Act, the holder of a nonproducing lease, although in full compliance with the lease obligations, would be disqualified from bidding on new leases even if the land adjoined the existing lease and were an important part of the mining unit.

Senator, we are concerned that such a provision, as it was written, will have a dramatic impact on ongoing operations in the West and will prevent those operations from continuing to acquire reserves, to keep up employment, as well as production of coal.

Also this provision may apply to oil and gas and other Mineral Leasing Act leases as well as coal leases so that an oil company whose coal subsidiary was not producing from its Federal coal lease could not be issued new oil and gas leases. We think that is not for the betterment of the coal industry in terms of the future energy supply of the country.

Section 3 of the bill would eliminate the requirement that all lands be contiguous. That provision ignores geological realities of coal deposits, rights-of-way to cross these coal deposits, and location of mine sites. The checkerboard mining ownership that exists in the West, particularly the North Dakota and some of the other States, makes this provision unworkable because of the way the coal ownership exists.

Section 4 of the bill deletes the requirement for a 3-year submittal of the resource and production plan.

Senator, as you are well aware, the Surface Mining Act has a long history and this provision as it relates to the Surface Mining Act requirements is unworkable, meaningless, and it offers no environmental protection. It offers nothing to the resource manager in trying to insure maximum economic recovery of the coal. Therefore, the deletion of this provision would simply remove a burdensome, unnecessary requirement on the coal industry which means nothing to the regulator in terms of assuring that the resource is developed in a sound manner.

These three provisions, if removed from the Mineral Leasing Act, will go a long way to insure continued competition of the coalfields as well as removing the unnecessary counterproductiveness.

[The prepared statement of Mr. Griles follows:]

OCT 18 1983

STATEMENT OF J. STEVEN GRILES, DEPUTY ASSISTANT SECRETARY, LAND AND WATER RESOURCES, BEFORE THE SUBCOMMITTEE ON ENERGY AND MINERAL RESOURCES, COMMITTEE ON ENERGY AND NATURAL RESOURCES, UNITED STATES SENATE, ON S. 1634, A BILL "TO AMEND THE MINERAL LANDS LEASING ACT AND FOR OTHER PURPOSES."

I appreciate the opportunity to appear before the subcommittee this morning to discuss the Department of the Interior's views on S. 1634, a bill which would amend several provisions of the Mineral Lands Leasing Act relating specifically to coal.

This Administration places a high priority on the development and use of coal in order to meet the energy needs of the country. We agree with the sponsors of S. 1634 that some of the provisions of the Mineral Leasing Act of 1920, as amended by the Federal Coal Leasing Amendments Act of 1976, do not allow sufficient flexibility to accommodate realistic coal development timeframes.

In effect, these provisions serve to discourage, rather than encourage, coal production. With this in mind, the Department has been studying the coal provisions of the Mineral Leasing Act with a view to making recommendations for its amendment. Our objective, of course, is a law which provides for orderly and efficient development of the coal resource, recognizing both regulatory and technological constraints.

We support the enactment of S. 1634.

Section 2 of S. 1634 would delete from the law the provision that prohibits anyone who has held a nonproducing Federal coal lease for 10 years from acquiring a lease or leases under the terms of the Mineral Leasing Act.

For leases issued before the Federal Coal Leasing Amendments Act, the 10-year clock started on August 4, 1976.

Because of this provision, companies are faced with the unprecedented and unnecessary choice of relinquishing old Federal leases in order to bid on new ones, or of holding old leases and being disqualified from bidding on new ones. Those who choose to hold valuable but nonproducing leases cannot bid for new leases, thus removing competitors from new lease sales.

The 1986 effective date of this prohibition conflicts with the diligent development timing established for old leases in the Department of the Interior regulations. These rules would give the holders of older leases until 10 years after the next readjustment of their lease terms to initiate production. Thus, a lease issued in 1964, and readjusted in 1984, would require production by 1994.

Under current law, between 1986 and 1994 the holder of this nonproducing lease, although in full compliance with his lease obligations, would be disqualified from bidding for new leases even if the lands adjoined the existing lease and were an important part of the mining unit. Furthermore, synfuels projects to which Federal coal is committed but which will not be producing in 1986 may collapse if the coal companies must withdraw from the projects to avoid the prohibition against acquiring new leases.

Finally, one interpretation of the prohibition against being issued "a lease or leases under the terms of this Act" is that it applies to oil and gas and other Mineral Leasing Act leases as well as coal leases, so that an oil company whose coal subsidiary was not producing from its Federal coal lease could not be issued new oil and gas leases. We believe that these effects are undesirable and strongly favor deleting this provision from the law.

Section 3 of S. 1634 would eliminate the requirement that all lands in a logical mining unit shall be contiguous. We support deleting this requirement. The contiguity requirement ignores the geological realities of coal deposits and is unnecessary to serve the purposes of logical mining unit formation -- that the lands will be mined as a single unit by a single operator.

We believe that the problem of combining tracts separated by barriers such as rights-of-way and the like can in many cases be resolved by regulations redefining contiguity in terms of legal subdivisions, such as those adopted by Department of the Interior in 1982 in 43 CFR 3480.0-5(a)(7). There is no strong reason to keep the requirement in the law. Accordingly, it is appropriate to delete this unnecessary statutory provision.

There is a technical error in the citation of the U.S. Code in section 3. The correct citation is "30 U.S.C. 202a(1)."

Section 4 of S. 1634 would delete the time requirement -- 3 years -- within which a lessee is required to submit a resource recovery and reclamation plan to the Secretary for approval. We concur with this amendment. Interior's regulations have severed this 1976 requirement from the reclamation permit application required under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Experience has shown it to be very difficult for an operator to do all the work necessary for permitting a new mine -- hydrology studies and the like -- and to file a complete SMCRA plan within 3 years.

I will be pleased to respond to any questions the subcommittee may have.

Senator WARNER. Thank you very much.

Senator Wallop.

STATEMENT OF HON. MALCOLM WALLOP, A U.S. SENATOR FROM THE STATE OF WYOMING

Senator WALLOP. Thank you.

Thank you Secretary Griles for your comments. I want to thank you Senator Warner for agreeing to hold a hearing this morning and I also want to welcome the witnesses appearing before us and I look forward to hearing their testimony.

The legislation before the subcommittee today is, in a sense, old business with a new urgency. Old business in that the three provisions of my bill were contained within more comprehensive legislation proposed by Senator Murkowski last year; the new urgency caused by the present moratorium on the leasing of additional Federal coal reserves.

S. 1634, like its counterpart H.R. 1530 introduced by Congressman Kogovsek in the House of Representatives, repeals section 3 of the 1976 Federal Coal Leasing Amendments Act—[FCLAA]. That punitive provision of law would bar the Secretary of the Interior from issuing leases for any minerals under the Mineral Lands Leasing Act of 1920 to lessees who hold and have held coal leases for 10 years after the enactment of FCLAA without producing coal in commercial quantities. When I introduced this legislation I pointed out that, for a number of valid reasons, much coal now under lease will not be produced by 1986. If section 3 is not repealed, coal producers and other energy companies holding coal leases will realistically have two options. They can give up all nonproducing coal leases in order to be able to lease other minerals such as onshore oil and gas, oil shale, tar sands, phosphate, sodium, potassium, asphalt, and bitumen. Or they can keep the coal leases in hopes of developing them sometime in the future, and in the meantime be blocked from leasing other minerals. While the intent of section 3 seems to have been to guarantee diligent development and an end to speculative holding of leases, the fact of the matter is that coal lease speculation has been greatly diminished in the highly structured, regulated, and more expensive leasing climate of today. Moreover, the section 7 diligence requirements in FCLAA would remain intact under this proposal.

Let me add that my concerns about Section 3 are even greater now that, over the objections of myself and others, a coal leasing moratorium is in effect. That moratorium forces us to focus attention on the status of the existing leases. So long as the moratorium continues, pre-1976 leases will comprise the bulk of the Federal reserves available to meet production needs in the 1990's. While not all the existing leases will make it through the detailed permitting required by the Surface Mining Control and Reclamation Act of 1977 as well as the other State and Federal environmental reviews, it is clear that we should not arbitrarily block development of those leases which can clear the appropriate administrative and environmental hurdles.

Without repeal of the onerous section 3, the market for and operations on many existing Federal coal leases will be adversely affected. By 1986 the threat posed by section 3 could seriously undermine the entire Federal mineral leasing program. Such an event would have an extensive and highly adverse effect on the Nation's future energy production capacity. I might add the Nation's energy consumers. In this hearing today we will hear from witnesses who can detail the specific impacts of our failure to repeal section 3.

Again, thank you Mr. Chairman.

[The prepared statement of Senator Wallop follows:]

STATEMENT BY SENATOR WALLOP
SUBCOMMITTEE ON ENERGY AND MINERAL RESOURCES
S. 1634
OCTOBER 18, 1983

Let me begin by thanking the Chairman of the Subcommittee, Senator Warner, for agreeing to hold this hearing this morning on S. 1634. I would also like to welcome all of the witnesses, and look forward to hearing their testimony.

The legislation before the subcommittee today is, in a sense, "old" business with a new urgency: old business in that the three provisions of my bill were contained within more comprehensive legislation proposed by Senator Murkowski last year; the new urgency caused by the present moratorium on the leasing of additional federal coal reserves.

S. 1634, like its counterpart H.R. 1530 introduced by Congressman Kogovsek in the House of Representatives, repeals Section 3 of the 1976 Federal Coal Leasing Act Amendments. That punitive provision of law would bar the Secretary of the Interior from issuing leases for any minerals under the Mineral Lands Leasing Act to lessees who hold and have held coal leases for 10 years after the enactment of FCLAA without producing coal in commercial quantities. When I introduced this legislation I pointed out that, for a number of valid reasons, much coal now under lease will not be produced by 1986. If Section 3 is not repealed, coal producers and other energy companies holding coal leases will realistically have two options. They can give up all non-producing coal leases in order to be able to lease other minerals such as on-shore oil and gas, oil shale, tar sands, phosphate, sodium, potassium, asphalt, and bitumen. Or they can keep the coal leases in hopes of developing them sometime in the future, and in the meantime be blocked from leasing other minerals. While the intent of Section 3 seems to have been to guarantee diligent development and an end to speculative holding of leases, the fact of the matter is that coal lease speculation has been greatly diminished in the highly structured, regulated, and more expensive leasing climate of today. Moreover, the Section 7 diligence requirements in FCLAA would remain intact under this proposal.

Let me add that my concerns about Section 3 are even greater now that, over the objections of myself and others, a coal leasing moratorium is in effect. That moratorium forces us to focus attention on the status of the existing leases. So long as the moratorium continues, pre-1976 leases will comprise the bulk of the federal reserves available to meet production needs in the 1990's. While not all the existing leases will make it through the detailed permitting required by the Surface Mining Control and Reclamation Act as well as the other state and federal environmental reviews, it is clear that we should not arbitrarily block development of those leases which can clear the appropriate administrative and environmental hurdles.

Without repeal of the onerous Section 3, the market for and operations on many existing federal coal leases will be adversely affected. By 1986 the threat posed by Section 3 could seriously undermine the entire federal mineral leasing program. Such an event would have an extensive and highly adverse effect on the nation's future energy production capacity. In this hearing today we will hear from witnesses who can detail the specific impacts of our failure to repeal Section 3.

Senator **Warner**. Senator Hecht.

Senator **Hecht**. No comment, thank you.

Senator **Warner**. Any questions of the witness?

Senator **Wallop**. No.

Senator **Hecht**. No.

Senator **Warner**. Thank you. We'll hear from Mr. Harry Perry, mineral economist.

STATEMENT OF HARRY PERRY, MINERAL ECONOMIST, WASHINGTON, D.C.

Mr. **Perry**. Mr. Chairman and members of the subcommittee, my name is Harry Perry and I am an independent energy consultant, specializing in coal related problems. I was invited by your chairman to present testimony on the subject bill.

About 6 months ago I prepared a report for the National Coal Association that studied the effect of section 3 provisions of the Federal Coal Leasing Amendments Act of 1976. In that report I examined the impact of section 3 provisions on leaseholders, competition for coal and other mineral leases covered by the Mineral Lands Leasing Act of 1920 and the Federal and State revenues resulting from leasing of Federal lands. In preparing that report I also examined the diligent development requirements that require commercial coal production in 10 years in the post-1976 leases that were to be awarded under terms of the 1976 act. It is my understanding that copies of this report have been distributed to the committee and to others concerned with coal leasing and that your request to appear today relates to that report.

In preparing the report I was fortunate to have available both the published and background reports of a very extensive Office of Technology Study that had been released December 1981 entitled "An Assessment of Development and Production Potential of Federal Coal Leases." This together with other records available from the Department of the Interior formed the basis of the study. As in most studies of this kind the data base has some deficiencies but it was possible to conclude that they were small enough not to affect the conclusions of the study.

The study concluded that lease acquisition rates through the preference rights lease applications process that was applicable under the Mineral Leasing Act had resulted in a large number of leases in the decade of the 1960's and that the moratorium on leasing issued by Interior Secretary Morton was needed to study new methods of leasing Federal coal lands. As indicated by the Office of Technology study, massive changes had occurred in the ownership patterns of the existing Federal leases. That was just referred to by Senator Wallop. Ownership of leases by landholding companies, unincorporated individuals and small coal companies, the so-called speculators that were of concern to Congress and to the Department of the Interior, fell from 65 percent of total lease ownership in 1950 to less than 13 percent by 1980. By 1980, therefore, nearly all of the pre-1976 leases were in the hands of owners who were in a position to develop the leases into the large operating mines that had become characteristics of western coal production and were no longer in the hands of speculators.

The effect of section 3 on pre-1976 leaseholders was to force production of these coal leases by August 1986, prevent holders of these leases from bidding on other Federal leases if no commercial coal production occurred on these leases and to have the lease holders relinquish the leases, either returning them back to the Government or assigning them to other owners.

The report examines the effect of each of these options. While I am not a lawyer, I have been advised that there could be legal restrictions on returning leases to the Government. The alternative of assigning the leases to other owners raises two serious problems. First, one must assume that the assignee will be obligated to develop the lease by August 1986, currently an unattainable goal unless the lease is already largely developed or the assignee will also be unable to begin other Federal mineral leases. Second, most firms in a position technically and financially to provide the large capital to develop a western coal mine either already own coal resources (probably also subject to section 3 provisions) or would be unwilling to acquire these leases that would, if not developed, prevent them from bidding on other Federal mineral leases.

The second option, continuing to hold the leases without coal development and thus being unable to bid on other Federal mineral leases for all commodities leased under the Mineral Leasing Act of 1920. To estimate what the impact might be the report analyzes recent mineral leasing sales for coal, oil and gas, other minerals, and oil shale.

Analysis of the Federal coal lease sales since the moratorium was lifted indicated that competition had been weak but that whatever competition occurred was due to the bidding of those now holding leases subject to the section 3 provisions. They were awarded 20 of the 32 leases on which bids were received and they made 16 unsuccessful bids on the other 12 coal leases.

For oil and gas leases section 3 leaseholders were active bidders in at least 20 of the 35 onshore oil and gas lease sales that were analyzed and submitted a minimum of 48 bids. In six of the eight other mineral resources offered for lease, section 3 leaseholders were the high bidders. In addition, they are the leaseholders in 72 percent of the Federal leases of four of these resources and 21 percent on the fifth resource.

The most dramatic example of the importance of section 3 bidders in maintaining competition for Federal leases is in the results of the four lease sales of oil shale held in 1974. For the lease sale with the largest bid, $210 million, seven of the eight bidders capable of developing the oil shale resources were section 3 leaseholders—or consortion with at least one section 3 leaseholder. Of the eight bids received for the remaining three leases, four were by companies affected by section 3 provisions. The highest bidders for all four of the leases were companies or consortia that included section 3 leaseholders and these had total bonus bids of $449 million.

It is apparent that section 3 leaseholders are key to maintaining effective competition for lease sales of Federal resources. Should these leaseholders be unwilling to face the economic penalties of giving up their pre-1976 coal leases—rather than developing them—then the receipts from sales of Federal resources would be seriously depressed. This is of great importance to the seven Western States in which the Federal coal resources are concentrated. For example, in 1982 a total of $1.5 billion was obtained from the leasing of Federal mineral resources of which 90 percent is returned to the States, 50 percent directly and 40 percent indirectly through contributions to the Reclamation Fund.

If on the other hand the economic penalty of giving up these pre-1976 leases appears to be too great to the section 3 leaseholders, the impact on the western coal market could be very severe. It would be impossible for all holders of section 3 leases to develop their leases and find markets for the coal. The estimated demand for western coal (based on DOE and other projections) is expected to be 315 million tons per year in 1985. The productive capacity of existing coal mines and those under development is estimated to be 368 million tons in 1985, or an excess capacity of 53 million tons. If 1 percent of all pre-1976 lease reserves being produced in 1985—as required by section 3 if penalties are to be avoided—and after correcting for duplication of capacity, there would be an excess of 120 million tons of producing capacity over demand in 1985.

What is particularly disquieting about the section 3 provision is that, if it is enforced there will be a large surplus of coal producing capacity in 1985 should section 3 holders decide to meet the requirements of that section. On the other hand, if they decide to relinquish their leases to avoid the penalties of section 3, then in the later half of the 1980's and early 1990's there could be a serious shortage of western coal to meet electric utility and other demands for coal. Under these circumstances competition would be weak and coal prices, at least for some years, would be higher than they would otherwise have been. In a separate short study, the data of the original report was examined, and if all section 3 leaseholders who might give up their leases actually did so, competition for coal contracts would be seriously reduced, again for some years until new leases could be offered and new production capacity installed.

One final area covered by my report relates to the time required to develop a new coal mine. It's in the statement and I will not repeat that here. On the other hand I would like to come to the conclusion it comes to, the 10 year diligence requirement appears to be shorter than that required to bring new production into operation in an orderly sequence, a minimum time required to bring a new mine into production was estimated to be 7 years.

Let me conclude my remarks by relating again the conclusions of the study on the impacts of section 3. It appears that section 3 will not be of benefit to consumers, producers and to the States where coal is leased. Consumers could be faced for some years with higher coal and electricity prices, producers will either be forced to relinquish their current holdings or be unable to bid on other Federal leases and States will have less income from Federal leasing because of the greatly reduced competition for Federal mineral resources if owners decide it is in their best interest not to relinquish their pre-1976 coal lease holdings.

It is true that these adverse effects could be corrected in time, but the dislocations caused by the section 3 provisions appear to have no corresponding benefits that would justify allowing it to become effective.

[The prepared statement and report submitted by Mr. Perry follows:]

Mr. Chairman and members of the Subcommittee. My name is Harry Perry and I am an independent energy consultant, specializing in coal related problems. I was invited by your Chairman to present testimony on the subject bill.

About six months ago I prepared a report for the National Coal Association that studied the effect of Section 3 provisions of the Federal Coal Leasing Amendments Act of 1976. In that report I examined the impact of Section 3 provisions on (1) leaseholders, (2) competition for coal and other mineral leases covered by the Mineral Lands Leasing Act of 1920 and (3) the federal and state revenues resulting from leasing of Federal lands. In preparing that report I also examined the diligent development requirements that require commercial coal production in 10 years in the post-1976 leases that were to be awarded under terms of the 1976 Act. It is my understanding that copies of this report have been distributed to the Committee and to others concerned with coal leasing and that your request to appear today relates to that report.

In preparing the report I was fortunate to have available both the published and background reports of a very extensive Office of Technology Study that had been released December 1981 entitled "An Assessment of Development and Production Potential of Federal Coal Leases." This together with other records available from the Department of Interior formed the basis of the study. As in most studies of this kind the data base has some deficiencies but it was possible to conclude that they were small enough not to affect the conclusions of the study.

The study concluded that lease acquisition rates through the Preference Rights Lease Applications process that was applicable under the Mineral Leasing Act had resulted in a large number of leases in the decade of the "Sixties" and that the moratorium on leasing issued by Interior Secretary Morton was needed to study new methods of leasing of Federal Coal Lands. As indicated by the Office of Technology study, massive changes had occurred in the ownership patterns of the existing federal leases. Ownership of leases by landholding companies, unincorporated individuals and small coal companies, the so called "speculators" that were of concern to Congress and to the Department of Interior, fell from 65% of total lease ownership in 1950 to less than 13% by 1980. By 1980, therefore, nearly all of the pre-1976 leases were in the hands of owners who were in a position to develop the leases into the large operating mines that had become characteristic of western coal production and were no longer in the hands of "speculators."

The effect of Section 3 on pre-1976 leaseholders was (1) to force production of these coal leases by August 1986, (2) prevent holders of these leases from bidding on other federal leases if no commercial coal production occurred on these leases and (3) to have the lease holders relinquish the leases — either returning them back to the government or assigning them to other owners.

The report examines the effect of each of these options. While I am not a lawyer, I have been advised that there could be legal restrictions on returning leases to the government. The alternative of assigning the leases to other owners raises two serious problems. First, one must assume that the assignee will be obligated to develop the lease by August 1986 — currently an unattainable goal unless the lease is already largely developed or the assignee will also be unable to bid on other federal mineral leases. Secondly, most firms in a position technically and financially to provide the large capital to develop a western coal mine either already own coal resources (probably also subject to Section 3 provisions) or would be unwilling to acquire these leases that would, if not developed, prevent them from bidding on other federal mineral leases.

The second option — continuing to hold the leases without coal development and thus being unable to bid on other federal mineral leases would result in greatly reducing the competition for federal leases for all commodities leased under the Mineral Leasing Act of 1920. To estimate what the impact might be the report analyzes recent mineral leasing sales for coal, oil and gas, other minerals and oil shale.

Analysis of the Federal coal lease sales since the moratorium was lifted indicated that competition had been weak but that whatever competition occurred was due to the bidding of those now holding leases subject to the Section 3 provisions. They were awarded 20 of the 32 leases on which bids were received and they made 16 unsuccessful bids on the other 12 coal leases.

For oil and gas leases Section 3 leaseholders were active bidders in at least 20 of the 35 onshore oil and gas lease sales that were analyzed and submitted a minimum of 48 bids. In six of the eight other mineral resources offered for lease, Section 3 leaseholders were the high bidders. In addition, they are the leaseholders in 72% of the federal leases of four of these resources and 21% on the fifth resource.

The most dramatic example of the importance of Section 3 bidders in maintaining competition for federal leases is in the results of the four lease sales of oil shale held in 1974. For the lease sale with the largest bid, $210 million, 7 of the 8 bidders capable of developing the oil shale resources were Section 3 leaseholders (or consortion with at least one Section 3 leaseholder). Of the 8 bids received for the remaining 3 leases, four were by companies affected by Section 3 provisions. The highest bidders for all 4 of the leases were companies or consortia that included Section 3 leaseholders and these had total bonus bids of $449 million.

It is apparent that Section 3 leaseholders are key to maintaining effective competition for lease sales of federal resources. Should these leaseholders be unwilling to face the economic penalties of giving up their pre-1976 coal leases (rather than developing them) then the receipts from sales of federal resources would be seriously depressed. This is of great importance to the seven Western states in which the Federal coal resources are concentrated. For example, in 1982 a total of $1.5 billion was obtained from the leasing of Federal mineral resources of which 90% is returned to the states, — 50%, directly and 40% indirectly through contributions to the Reclamation Fund.

If on the other hand the economic penalty of giving up these pre-1976 leases appears to be too great to the Section 3 leaseholders, the impact on the Western coal market could be very severe. It would be impossible for all holders of Section 3 leases to develop their leases and find markets for the coal. The estimated demand for western coal (based on DOE and other projections) is expected to be 315 million tons per year in 1985. The productive capacity of existing coal mines and those under development is estimated to be 368 million tons in 1985 — or an excess capacity of 53 million tons. If 1 percent of all pre-1976 lease reserves were being produced in 1985 (as required by Section 3 if penalties are to be avoided) and after correcting for duplication of capacity, there would be an excess of 120 million tons of producing capacity over demand in 1985.

What is particularly disquieting about the Section 3 provision is that, if it is enforced there will be a large surplus of coal producing capacity in 1985 should Section 3 holders decide to meet the requirements of that section. On the other hand, if they decide to relinquish their leases to avoid the penalties of Section 3, then in the later half of the 1980's and early 1990's there could be a serious shortage of western coal to meet electric utility and other demands for coal. Under these circumstances competition would be weak and coal prices, at least for some years, would be higher than they would otherwise have been. In a separate short study, the data of the original report was examined, and if all Section 3 leaseholders who might give up their leases actually did so, competition for coal contracts would be seriously reduced -- again for some years until new leases could be offered and new production capacity installed.

One final area covered by my report relates to the time required to develop a new coal mine. The new mining capacity being installed in the West is, for the most part, in very large strip mining operations. In fact, the 15 largest coal mines in the U. S. are Western strip mines with the largest operation being more than 3 times the size of the largest eastern coal mine. Since large mines result in economies of scale and lower coal prices almost all new mines, except those to supply local needs, are also expected to be large.

Estimating the time required to obtain permits (state and federal) and to construct production facilities is unique for each installation. The Office of Technology Assessment estimated that the time covered range from 5 to 12 years. The reason for this wide range is largely in estimating the time required before construction actually can begin. Because large investments are required to install a mine large enough to compete with other producers in the West, a potential mine operator wants to develop a market prior to making major mine investments. The time to develop a market sufficiently certain so that funds can be borrowed can vary very widely. Keeping this in mind, an estimate of the minimum time required to develop a new mine was made, based on the following assumptions: the planning by the mining company is carried out efficiently, there are no unexpected delays in the permitting process, no new regulations are enacted during the permitting process and there are no intervenors who raise objections to the new installation. Even under these very optimistic assumptions the minimum time to bring a new mine into production was estimated to be 7 years. Any variation from the optimistic assumptions would increase the time required, with the amount of extra time impossible to estimate with any accuracy.

For these reasons the 10 year diligent development requirement appears to be shorter than that required to bring new production into operation in an orderly sequence.

Let me conclude my remarks by relating again the conclusions of the study on the impacts of Section 3. It appears that Section 3 will not be of benefit to consumers, producers and to the states where coal is leased. Consumers could be faced for some years with higher coal and electricity prices, producers will either be forced to relinquish their current holdings or be unable to bid on other federal leases and states will have less income from Federal leasing because of the greatly reduced competition for federal mineral resources if owners decide it is in their best interest not to relinquish their pre-1976 coal lease holdings.

It is true that these adverse effects could be corrected in time, but the dislocations caused by the Section 3 provisions appear to have no corresponding benefits that would justify allowing it to become effective.

AN EVALUATION OF SELECTED PROVISIONS
OF THE
FEDERAL COAL LEASING AMENDMENTS ACT OF 1976

Submitted to

THE NATIONAL COAL ASSOCIATION

by

HARRY PERRY

EXECUTIVE SUMMARY

This paper examines the background events leading up to passage of the Federal Coal Leasing Amendments Act of 1976 (FCLAA)) which amended the Mineral Lands Leasing Act of 1920 and evaluates the potential effects of key provisions of the 1976 Act. In particular, the study focuses on Section 3, which provides that the Secretary of the Interior may not issue a lease for any mineral leased under the MLLA to a lessee who holds and has held a coal lease for 10 years after enactment of the FCLAA (August 4, 1986) without producing coal in commercial quantities from that lease.

Of particular concern is an evaluation of the impact of Section 3 on competition in future federal mineral leasing activities, the availability of federally owned energy supplies vis-a-vis national energy needs, and revenue flows to the Federal government and states from federal leasing activities.

The most critical points made in the study are that enforcement of the provisions of Secton 3 would create serious problems not only for the holders of pre-1976 leases but also would:

- upset the equilibrium of the western coal markets by forcing more production by a specified date than the market can absorb at that time;
- diminish competition for federal coal and other mineral leases by precluding many of the multi-mineral and coal-only producers most likely to bid on federal leases from bidding; and
- reduce federal and state revenues by precluding development of other federal mineral resources through the elimination of competition for such resources.

The following summarizes the major parts of the study.

Two of the primary objectives of the FCLAA were the elimination of speculation in federal leases and increased production of federal coal to lessen the nation's dependence on foreign oil imports. The Introduction and Parts 2, 3 and 4 discuss in historical and analytical terms forces leading up to the enactment of the FCLAA and the broader energy policy context in which the FCLAA was enacted. They also examine the issue of speculation.

The Introduction discusses changes in total U.S. and western energy demand which stated in the decade of the 1960s. These included a steady sharp rise in total U.S. energy demand, recognition of the relative advantages of using abundant domestic coal resources and increasing concern about environmental degradation. These changes led to widespread interest and rapid acceleration in the leasing of federally-owned coal. This Section also describes how by 1970 concern had developed over the rapid rise in the number of federal leases being accumulated by private parties as a result of federal coal leasing which led to questions about lease ownership patterns and ultimately led the Secretary of the Interior to announce a moratorium on further federal coal leasing until the issues had been resolved.

Part 3 analyses the changes in lease ownership that occurred during the 1970-1980 moratorium, market forces causing major changes in ownership patterns that greatly reduced the potential for speculation in federal leases. In essence, ownership passed from unincorporated individuals, land holding companies and small independent producers to energy and mineral companies who possess the financial and technical capability to develop the coal. Later in the Study, (Part 7) an analysis of the patterns of production from pre-1976 leases now in operation shows that most current lease owners can be expected to produce on these leases when needed and not speculate.

Part 4 further examines the question of speculation. It shows that the large inventory of federal lease holdings in private hands by 1970, which was thought to be one indication of speculation, was not excessive, considering the wide ranges of uncertainty regarding future demand for western coals, the variety of coals of different qualities for which reserves had to be maintained and the requirement of reserves for a mine life of 30 years or more. This section also discusses how historically the coal industry and others dependent on depletable resources for their marketable products have tried to maintain large inventories to assure long-term supplies. In this respect, the size of the western federal coal reserves that had been leased by 1970 was similar to the privately-owned eastern reserves of coal, after adjusting for differences in production rates.

Parts 5-7 examine the issue of forcing production through the penalty set forth in Section 3.

Parts 5 and 6 discuss the difficulty of estimating demand for federal coal and how this poses serious problems for both producers and the Federal government and leads to wide variations in the estimates of how much federal coal will be needed at any given time. Notwithstanding this, and recognizing that such estimates are extremely difficult to make and highly uncertain, the study presents certain estimates of productive capacity and demand in 1985. These estimates form part of the basis for the detailed discussion in Part 8 of the impact of Section 3, if it is retained in law.

Part 8 sets forth the most critical points of the study illustrating that not only are Section 3 leaseholders affected but also the states and the Federal government; namely, enforcement of Section 3 would:

. upset the equilibrium of the western coal markets by forcing more production by a specified date than the market can absorb at that time;

. diminish competition for federal coal and other mineral leases by precluding many of the multi-mineral and coal-only producers most likely to bid on federal leases from bidding; and

. reduce federal and state revenues by precluding development of other federal mineral resources through the elimination of competition for such resources.

Part 8 also examines the problems Section 3 leaseholders would face if they attempted relinquish their lease by selling it, for example, to another company. It shows that those in a financial position to acquire and develop such a lease (with any improvements already made) would also be faced with a weak coal market. Moreover, these companies would probably already own a pre-1976 lease or, if not, would be reluctant to acquire one and so be unable to bid on other federal resources.

Parts 9 and 10 discuss the problems associated with requiring production from federal coal leases within a rigid 10-year period. Part 9 deals with the problem in terms of the requirement for "diligent development" also incorporated in the FCLAA.

Part 10 discusses the inflexible 10-year Section 3 requirement in terms of the real world of mining. Part 10 also shows that a minimum time of seven years is required to develop a new large western coal mine and bring it into full production, even if there are no unpredictable delays in the long and complex mine development process. An even longer time can often be required, especially if delays are introduced by special permitting problems or the mine owner must stretch out development to accommodate changed market conditions. The adverse financial effect could be very severe on a producer who had made large investments in good faith but could not meet the 10-year development requirement.

This Report is a detailed policy and economic study. It in no way is intended as a legal study of the potential interpretations of the language inserted by Section 3.

An Evaluation of Selected Provisions of the Federal Coal Leasing Amendments Act of 1976

I. Introduction

Federal coal lands are leased under provisions of the Mineral Lands Leasing Act of 1920, as amended. Leasing proceeded at a leisurely pace from the issuance of the first lease in 1921 until about 1955. By that time, 119 leases covering 76,000 acres out of a total of more than 11 million acres of federal known recoverable coal lands had been issued. Starting in 1955, interest in acquiring federal coal lands increased sharply and in the 10 years from 1960 to 1970, 319 federal coal leases were issued, nearly twice as many as the 166 that had been issued during the previous 40 years.

This accelerated interest in leasing federal coal lands developed during a period when the long-term demand for domestic coal was expected to grow rapidly. Prior to this period, for nearly 100 years, U.S. coal mines had been concentrated in the eastern U.S. However, the higher cost of oil compared to coal and its less certain availability (as U.S. domestic oil production peaked in the early 1960s), among other things, stimulated interest in coal resources. Two other considerations also contributed to increased interest in coal: The long-term steady growth in electricity generation, for which coal appeared to be the lowest-cost fuel, and the growing realization that synthetic fuels (liquids and gases) produced from coal would be needed at some time in the future to provide a secure domestic energy supply.

The expectation of increased coal demand stimulated particular interest in western coal resources since it was realized that these resources could be surface-mined much more cheaply than eastern underground coal. Later, the lower sulfur content of most western coals added to their economic attractiveness as more stringent regulations for control of sulfur oxide emissions were promulgated and the control technologies used to enable higher sulfur coals to meet the new regulations proved to be more costly than had been anticipated. In addition, market demand for fuels was increasing at a more rapid rate in the western part of the U.S. than in the east as both population and industrial activity shifted westward.

The development of western coal resources is heavily dependent on the policies adopted by the federal government with respect to the leasing of federal coal lands and the exercise of other federal authority. It is estimated that nearly 60% of all the recoverable coal reserves in the western states are in federal ownership.

In addition, much of the other 40% of the reserves can only be developed economically in cooperation with federal reserves. Rights-of-way over federal lands (to construct roads, install electric power lines), creation of joint logical mining units and federal permits of many types are required to develop these privately-held resources. To set the importance of this non-federal production in perspective, in 1979, mines simultaneously producing coal from both federal and non-federal resources accounted for over 58% of total non-federal coal production.

At present, approximately 20% of all federally-owned coal resources have been leased. The percentage of leased federal coal varies among the states from a high of 50% in Utah to a low of 3% in North Dakota.

By 1970, there were 485 federal coal leases in existence mainly west of the Mississippi. They covered 733,318 acres, with additional unprocessed preference right leasing applications (PRLAs) [1/] covering 322,725 acres potentially convertible to federal coal leases. These leases contained approximately 16 billion tons and PRLAs, 5.4 billion tons of recoverable reserves. Western coal production from federal coal leases in 1970 was only 7.3 million tons while total western production was 34.4 million tons (including output from private, State and Indian lands). By 1979, coal production from mines containing federal leases had grown to 144.1 million tons, a 20-fold increase in 9 years, and production was rising.

Coal leasing activities in the 1960s illustrated two types of economic activity.

First, companies developing mineral resources assemble and hold "inventories" (reserves) of both federal and non-federal resources to offer future markets; second, "speculators" acquiring coal leases in anticipation of a future demand which would drive prices up to cover holding costs and provide an acceptable rate of return.

[1/] Preference Right Lease - a non-competitive coal lease issued to a holder of a prospecting permit who discovers coal in commercial quantities on land under permit. This leasing option was terminated in 1976.

In the case of companies developing mineral resources, the amount held had to reflect the great variability in estimates of future total coal demand as well as the large number of different coal qualities that may be required (e.g. high sulfur versus low sulfur), location of reserves with respect to transportation costs and export versus domestic markets. Mines typically operate for extended periods (30 years or more) and generally with production rates greater than the initial output so that large reserves must be held to assure reliable production over the life of the mine. As with other industries, the size of the "inventory" will depend on the cost of holding it and anticipated demand for the product. During the 1960s, the combination of low holding costs and projected (but uncertain) large increases in future demand for western coal led mining companies to acquire relatively large reserves measured by the then current production.

In the case of speculation, it should be noted at the outset that speculation serves a useful economic function by allowing future users to pay present users to refrain from depleting resources (much as interest rates induce savings). The owner's incentive to hold the resource for a higher future value -- to speculate -- prevents it from being depleted too rapidly. In the case of western coal, the early "speculators" helped to prevent a rapid rise in prices when a market developed for this coal.

A large number of the original federal coal leases issued in the 1960s were to small independent companies and unincorporated individuals. These owners created and maintained a market for federal leases and assembled mineable reserves that could be transferred to owners in a position to develop them when market conditions warranted. By the mid-1970s, many of the original leases had been acquired by coal companies with the capital to construct the mining capacity needed to serve the developing markets.

The accelerated leasing of federal coal lands in the 1960s under the favorable terms and conditions of the Mineral Lands Leasing Act of 1920 as amended (MLA) created an awareness at the federal level of the rapidly changing situation with respect to both the supply and demand for western coals and the low costs of acquiring and holding coal. This led to a realization of the need to reevaluate federal leasing procedures. To provide time to evaluate this situation and suggest needed changes in the federal laws and regulations used to dispose of federal coal resources in a manner that protected both the public and private interests, an informal moratorium on federal coal leasing was announced in 1971 and a formal moratorium adopted in February 1973.

While the moratorium was in effect, the Federal Coal Leasing Amendments Act of 1976 was passed with Section 3 of the Act directed at preventing speculation in leases issued prior to the Act. In the following sections, an analysis of Section 3 evaluates the current need for that provision, its effectiveness in achieving its objectives, the impact of its implementation on coal markets and its effect on other federal mineral leasing activities and income.

2. The Federal Coal Leasing Amendments Act of 1976 (FCLAA)

During the moratorium on leasing of federal coal lands (1971 to January 1981), a few PRLAs were converted to leases [2/] and a few emergency leases were issued to ensure continued production from existing mines or to supply near-term production to satisfy existing market demand. This acreage (including that leased during 1970 and 1971 before the moratorium was effective) represented about 10% of the total acreage under lease in 1980.

While the moratorium was in effect, Congress reviewed the status of leasing of federal coal lands and, after extensive hearings, passed the FCLAA of 1976. These hearings were, in part, aimed at determining if the many federal coal leases acquired during the 1960s were being held for purely speculative purposes and whether the diligent development and continued operations requirements of the Minerals Leasing Act of 1920 were effective in preventing such speculation.[3/]

Major revisions were made in leasing procedures and in the terms and conditions of leases issued under the FCLAA of 1976 (a summary of which is given in Appendix A). The most important changes included a shift to an all-competitive bonus bid leasing system, imposition of strict diligent development requirements and minimum federal production royalties. While these modifications are important to prospective new lessees and will likely serve to end speculation in future coal leases and assure adequate

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[2/] The Department of the Interior (DOI) had not processed all the PRLAs when the moratorium was initiated. As of 1980, about 176 applications still remained; the Minerals Management Service of DOI estimates that as of December 1982, about 150 applications are in process. All are expected to be completed by December 1984.

[3/] Under the Mineral Leasing Act of 1920, as amended prior to 1976, leases were issued for an indeterminate period as long as the lessee could demonstrate diligent development and continued operation of the lease, with readjustment of terms, rentals and royalties at the end of each 20-year period after issuance.

revenues from federal coal resources, primary emphasis in this report is on those provisions of the Act that affect pre-1976 leases. The major provision affecting the pre-1976 leases that is discussed in more detail below (Part 8) essentially prohibits the Secretary from issuing a lease under the Mineral Lands Leasing Act to a lessee who holds and has held a lease for 10 years (after passage of FCLAA) without producing coal in commercial quantities from that lease.

Section 3 had a two-fold purpose: (1) to eliminate speculation on pre-1976 leases, and (2) to force production of western coal to lessen dependence on foreign oil imports.

The original Senate Bill (Title I of S. 391) did not contain a provision similar to Section 3. The House version, as reported by the Committee on Interior and Insular Affairs, allowed 15 years to meet the diligent development requirements. This provision was amended on the House Floor to allow only 10 years to meet diligence. No conference was convened by the two houses to resolve the differences. The House bill was adopted by the Senate by voice vote after little debate. Under these circumstances, it is not surprising that Section 3 has created difficult and complex problems in the efficient management of pre-1976 leases.

Other important legislation affecting the leasing of federal coal resources was also enacted during the moratorium. These acts included the Federal Land Policy and Management Act of 1976, which instituted a comprehensive land planning process for federal lands (including coal lands), and the Surface Mining Control and Reclamation Act of 1977, which contained strict environmental protection for both mining and reclamation of all coal lands.

3. Changes in Ownership of Federal Leases, 1970 to 1980

One of the major objectives of both the moratorium on federal coal leasing and of the FCLAA of 1976 was the prevention of potential speculation in federal coal resources. Two approaches to inhibit speculation were adopted by the FCLAA legislation: (1) new methods were prescribed for acquiring federal leases and (2) lease terms provided that newly acquired federal leases were to be used promptly for coal production and not held for speculative purposes.

The ten-year moratorium, the changing market conditions and the enactment of FCLAA had a marked effect on ownership patterns of existing pre-1976 federal coal leases and PRLAs in the decade of the seventies. Concentration of ownership shifted from business activities and organizations with minimal financial or technical capability and/or coal mining experience to businesses that needed coal for their integrated operations.

Leases

Before 1976, under the MLA, leases could be acquired by one of three methods -- lease sales (with bonus bidding), preference rights and segregation. [4] The number and percent of coal leases acquired by the original lessees under each of these methods before the moratorium is shown in Table I for those leases still in effect on September 30, 1980. [5] Of the 52% of leases shown to have been acquired through sales, over one half were in sales where there was only one bidder. In all, about three quarters (half of those acquired by sale and 42% by preference lease rights) of the federal coal leases in effect in 1980 had been acquired originally under essentially non-competitive conditions. They had been easily available, usually at low cost, both to those with legitimate needs for producing the coal reserves and those whose primary objective may have been speculation. The diligence and continued operations conditions for leases acquired prior to 1976 under the MLA were not very restrictive, and, moreover, the leases were loosely administered with respect to these provisions. Speculation in federal coal leases was inexpensive.

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[4] Segregation is the division of an existing lease into two or more leases by the lessee, with the approval of the Department of the Interior.

[5] Data for 1980 are used since a detailed analysis of leases was made using 1980 data by the Office of Technology Assessment and no major changes have yet occurred in the status of either leases or PRLAs. Processing of PRLAs was resumed in 1979 and of leasing in January of 1981.

Table 1

Lease Issuance Method for Existing Leases

Issuance Method	Number of leases	Percent of leases
Lease sales	294	52
Preference right	237	42
Segregation	34	6

Source: Office of Technology Assessment

1980 data.

Table 2

Lease and PRLA Acquisition Method Used by Present Owner

Acquisition Method	Number and Percent of Leases			Number and Percent of PRLAs		
De Novo	117		(22%)	19		(11%)
Assignment	403		(75%)	133		(76%)
First	-	146		-	76	
Second	-	124		-	27	
Third or more	-	133		-	30	
Segregation	18		(3%)	24		(14%)

Source: Office of Technology Assessment

September 1979 data.

During the 1960s, when interest in western coal lands developed, the share of leases held by unincorporated individuals, landholding companies and independent coal companies -- most of which would normally not be technically or financially able to bring large leases into production -- fell from 55% to 28%. (See Table 3 for lease ownership patterns from 1950 to 1980 at five-year intervals.) By 1980, shortly before the moratorium was lifted, the share held by these three types of business activities had declined further to less than 13%. Between 1970 and 1980, as Table 3 indicates, the companies that acquired leases from these owners were large coal companies or large integrated companies (electric utilities, energy companies, natural gas pipeline companies), which have or will have a need for coal resources as a raw material for their future operations.

Much of this shift in ownership from seeming speculators to producers occurred through reassignment. Once a lease or PRLA was issued, it could be acquired by another party through assignment (a provision which was unchanged by the FCLAA of 1976). The method of acquisition by the present (September 1979) owners of leases is shown in Table 2. Twenty-two percent were issued originally to the present owner, 3% were acquired by segregation by owners and 75% were by assignment. Of those acquired by assignment, about one third were acquired through one assignment, one third after two assignments and one third after three or more assignments. Table 2 indicates that by September 1979, there had been considerable selling or trading of coal leases after their original acquisition. [6]

PRLAs

The acquisition method used by 1980 owners of coal PRLAs was similar to that for coal leases. As Table 2 shows, the original owners now retain only 11% of the PRLAs and 76% were acquired by assignment. A comparison of Tables 3 and 4 shows that unincorporated individuals hold more PRLAs than leases while electric utilities and energy companies hold less. The reverse is true with regard to coal leases. Nevertheless, between 1970 and 1980, the trend has been even for PRLAs to be acquired by the larger companies. As Table 5 indicates, from 1970 to 1980, the share of PRLAs held by unincorporated individuals and landholding companies fell from 53% to 21% of the total while the share held by major energy-related businesses (energy companies, natural gas companies and electric utilities) increased from 7 to 37%.

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[6] Since 1979, large blocks of additional leases have changed ownership by assignment because of recent corporate ownership changes (see Table B-1, Appendix B).

The above data on ownership trends in the 10-year period -- 1970 to 1980 -- lead to the conclusion that the effect of the moratorium and the enactment of the FCLAA of 1976 resulted in a very sharp reduction in the potential for speculation in federal coal resources.[7/] Most of the leases and PRLAs are now in the hands of companies that need large coal supplies for their own use or are owned by large coal producers who will be able to develop the resources as market conditions warrant. (Of the business activity categories listed in Tables 4 and 5, only the "unincorporated individuals" and "land holding companies" would not be expected to become producers. The "non-resource-related" and "other" companies categories would have to be analyzed separately to evaluate their potential as producers.)

The importance of the effect of current ownership patterns on speculation is discussed more fully below in Part 8, "Effects of Section 3 Provisions of the FCLAA of 1976." [8/]

[7/] Changes in ownership patterns have not resulted in concentration of holdings. See OTA discussion in Appendix C.

[8/] Since these tables were prepared, there have been some changes in lease ownership patterns because of corporate ownership changes. These changes are discussed in Appendix B and are reflected in the ownership patterns shown in Table 9.

Table 3

Number of Acres and Percent of Total Leased Land Held by Business Activity Category

	1950		1955		1960		1965		1970		1975		1980	
	Acres held (#)	Land leased (%)	Acres held (#)	Land leased (%)	Acres held (#)	Land leased (%)	Acres held (#)	Land leased (%)	Acres held (#)	Land leased (%)	Acres held (#)	Land leased (%)	Acres held (#)	Land leased (%)
Electric utilities	0	0	2,000	3%	8,263	5%	45,363	15%	132,038	18%	142,077	19%	163,259	21%
Energy companies	0	0	0	0	0	0	9,491	3	132,274	18	138,409	18	155,024	20
Peabody Coal Co.	0	0	0	0	0	0	(6,251)	(2)	(59,121)	(8)	(68,923)	(9)	62,009	8
Steel companies	4,993	12	14,817	19	19,888	14	34,158	11	46,114	6	49,448	6	60,015	8
Independent coal companies	14,584	35	25,022	33	41,557	29	77,273	25	78,297	11	58,837	8	55,410	7
Oil and gas (minor) companies	0	0	0	0	0	0	2,080	1	28,911	4	42,193	6	45,326	6
Unincorporated individuals	11,129	27	17,518	23	25,678	18	41,475	13	78,995	11	66,515	9	43,215	5
Natural gas pipeline companies	0	0	0	0	0	0	0	0	0	0	32,522	4	36,317	5
Nonresource-related diversified companies	0	0	0	0	0	0	4,610	1	10,015	1	12,590	2	35,575	5
Kemmerer Coal Co.[a]	475	1	1,752	2	6,849	5	18,504	6	33,793	5	33,988	4	32,191	4
Metals and mining companies	5,009	12	5,009	7	9,266	6	17,708	6	107,504	15	118,300	15	17,620	2
Landholding companies	1,360	3	4,576	6	11,504	8	13,411	4	43,581	6	26,225	3	4,561	<1
"Other" lessees	2,907	7	3,240	4	18,288	13	39,134	13	41,153	6	37,051	5	77,361	10

NOTE: Uncategorized lessees hold less than 2 percent of land under lease at any analysis date.
Numbers might not add to 100 percent because of the holdings of uncategorized lessees.
Numbers in ( ) tabulated in metals and mining category (1970 and 1975) or in independent coal company category (1965).

Uncategorized	1,035	1,915	2,453	5,147	2,943	5,848	1,945
Lessees	2%	3%	2%	2%	< 1%	1%	< 1%

[a] In March 1981, Kemmerer Coal Co. was purchased by Gulf Oil Corp.

SOURCE: Office of Technology Assessment.

Table 4

Major Business Activity Categories Holding PRLAs in 1980 1/

	Percent of Land Included in PRLAs
Electric utilities	9
Energy companies	16
Peabody Coal Co.	(In "other," less than 5%)
Steel companies	0
Independent coal companies	(In "other," less than 5%)
Oil and gas (minor) companies	8
Unincorporated individuals	20
Natural gas pipeline companies	12
Non-resource-related diversified companies	(In "other," less than 5%)
Kemmerer Coal Co. 2/	10
Metals and mining companies	9
Landholding companies	1
"Other" companies	14

1/ The Office of Technology Assessment analyzed separately any business activity category (including individual companies with unique business structures) holding at least 5% of all land under lease of PRLA at at least 1 of 7 analysis dates between 1950 and 1980. The analysis includes 176 PRLAs in existence as of September 30, 1979.

2/ In March 1981, Kemmerer Coal Co. was purchased by Gulf Oil Corp.

SOURCE: Office of Techology Assessment

Table 5

Number of Acres and Percent of Land Under PRLAs Held by Business Activity Category

	1955-65	1970	1975	1980
Unincorporated individuals	up to 5,890 (100%)	147,022 (46%)	115,317 (28%)	80,559 (20%)
Energy companies	-	22,008 (7%)	30,738 (7%)	66,784 (16%)
Natural gas pipeline companies	-	0 (0%)	21,045 (5%)	46,867 (12%)
Kemmerer Coal Co. [a]	-	33,190 (10%)	39,160 (9%)	39,160 (10%)
Metals and mining companies	-	17,289 (5%)	39,461 (9%)	36,514 (9%)
Electric utilities	-	0 (0%)	3,113 (1%)	34,658 (9%)
Oil and gas companies (minor)	-	25,786 (8%)	34,375 (8%)	33,845 (8%)
Landholding companies	-	23,519 (7%)	28,639 (7%)	5,120 (1%)
International Geomarine and Coal Conversion		43,878 (14%)	46,084 (11%)	0 (0%)
Other lessees	-	9,874 (3%)	57,427 (14%)	58,216 (14%)
Unknown		260 (less than 1%)	260 (less than 1%)	3,077 (1%)

Total percentages might differ from 100% because of rounding.

[a] in March 1981, Kemmerer Coal Co. was purchased by Gulf Oil Corp.

Source: Office of Technology Assessment.

ISSUES RELATING TO SECTION 3 PROVISIONS OF THE FCLAA OF 1976

4. Coal Reserves Inventory

Historically, industries dependent upon depletable resources for their marketable product have tried to maintain large inventories of resources. The costs of the reserve inventory are treated as a "sunk cost" and efforts to increase the inventory continue even when holdings are already large. For the coal industry, some of the reasons for the large inventories are historic -- investments in facilities requiring coal as the raw material feedstock are extremely large and are expected to have operating lifetimes of 35 to 50 years or more, much of the inventory was acquired cheaply, and railroads, in particular, were granted vast tracts of coal-bearing land by the Federal Government.

Perhaps more importantly, a belief in continued economic growth with its accompanying requirement for larger quantities of goods has been a basic thesis of U.S. industry planning. Companies depending on depletable resources expected even larger demand for these resources in the future. The evidence for this industrial behavior when dealing in depletable resources is extensive and is particularly persuasive in the case of those industries reliant on coal resources -- coal, steel, railroads, and, more recently, electric power. (Appendix D is a recent listing of the estimates of coal tonnages owned, leased or controlled by organizations in the U.S. and Canada. The values do not differentiate between "recoverable" and "reserves in place" or between federally-leased and privately-owned coal, but the total of 161 billion tons is enormous and, if it were all recoverable, would represent nearly 200 years of supply at current production rates. 9/)

Western recoverable coal reserves, where nearly all of the federal leases are located, total about 240 billion tons and represent approximately 55% of the total recoverable coal reserves of the United States. The federal government owns between 50 and 60% of western coal resources. As noted previously, approximately 16 billion tons were under lease 10/ by September 1980 and an additional 5.7 billion tons were contained

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9/ A second estimate for reserves of high quality metallurgical coal owned or leased by 15 major coal and steel producers is shown in Appendix E.

10/ An additional 2.16 billion tons were leased during 1981 and 1982 (Table G-1, Appendix G).

in the preference right lease applications now under consideration by the Department of the Interior.

There are two important reasons for the Federal Government to be concerned about the size of the coal reserve inventory in private hands and the rationale for maintaining a given sized reserve. The first relates to the rate at which new federal leases should be offered to industry and the second to an understanding of the impact on the market for leases if all pre-1976 leases must meet diligent development requirements by August 1986.

With regard to the size of the reserve held privately, it has been argued that there is no need to lease additional federal lands because the existing leased reserves in private hands are sufficient for many years at current mining rates. This view is oversimplified.[11] First, there is some uncertainty about the total amount of coal under lease and even more uncertainty about the quantity that could be economically recovered. Many of the units are too small to justify mining on the large scale necessary for western coals to be competitive. Some deposits are found under geological conditions that would make exploitation uneconomical at this time and part of the reserves are on lands now disqualified for mining (alluvial valley floors, prime agricultural land) under the Surface Mining Control and Reclamation Act of 1977. Other leases are held by lessees unwilling or financially unable to start mining at this time (see Table 9). Finally, while 16 billion tons under lease appears to be a very large reserve, even if it could all be mined, it is not large enough to assure competitive offerings to potential consumers.

By 1988, western coal under contract is expected to be produced at about 400 million tons/year (Table 7). To supply even this amount of coal for 30 years (and demand in future years is expected to be much higher), 12 billion tons of reserves would be required. For a competitive market, at least two to three times this amount (24 to 36 billion tons) would be necessary to assure that consumers were not captive to single suppliers. The Department of Justice report issued in December of 1982 commented extensively on the antitrust effects that "underleasing" could have on western coal markets and recommended that the Department of the Interior lease several times as much coal as its formulas indicate in order to prevent inefficient use and anticompetitive effects. [12]

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[11] Based on "Energy: The Next Twenty Years," Hans H. Landsberg (Chairman of Study Group), Ford Foundation, Ballinger Publishing Company, Cambridge, Massachusetts, 1979, p. 292.

The relationship of coal reserve inventories and diligent development requirements for pre-1976 leases (relating to Section 3 of the FCLAA of 1976) is of major importance in understanding why coal reserves would normally continue to be held in an undeveloped state by industry and would not represent "speculation" in federal coal resources.

As indicated above, the pattern of those industries dependent on coal has been to maintain very large inventories for future use — even before widespread interest developed in federal coal leases. These companies have behaved toward their federal lease holdings exactly as they have for more than fifty years toward their privately-owned coal resources. The fact that at a particular time (1986) it would be economically unattractive to develop certain coal properties (market demand low, too many new federal leases to be produced at one time, the temporarily unsatisfactory financial condition of the company, etc.) is no indication that the leases are being held for speculation. Moreover, the reserves currently in private hands are not sufficiently large to ensure long-term competition in the western coal market.

The size and current ownership of pre-1976 leases and the status of their development are discussed in detail in Part 7. A consideration of the impact of meeting the Section 3 diligence requirements for pre-1976 leases on coal production and on meeting market requirements appears in Part 8.

5. Demand for Western Coal

Reliable estimates of the demand for western coal are important to the Federal Government in determining the rate at which federal coal resources should be leased, and to current leaseholders who must estimate whether the new production from the development of their pre-1976 leases by 1986 to meet Section 3 diligent development requirements of FCLAA could be absorbed by the market.

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[12] Competition in the Coal Industry, Report of the Department of Justice (Pursuant to Section 8 of the Federal Coal Leasing Amendments Act of 1976 for Fiscal Year 1981), December 1982.

Even the much less difficult task of reliably predicting total U.S. energy requirements -- regardless of whether they would be supplied by coal or some other fuel form -- has been extremely difficult. Total U.S. energy demand has grown at very varying rates during different periods, and even in retrospect, the causes for these different growth rates have not always been clear. For example, a comparison of twelve different energy projections was made in 1969 by the Energy Policy Staff [13/] and the range of estimates of total 1980 energy demand was from 61 to 99.7 Quads (Q) [14/] -- a variation of nearly 40% for a 12- to 18-year projection period. (Actual 1980 demand was 76Q.)

The impacts on energy demand of the OPEC oil embargo of 1973/1974 with the accompanying quadrupling of oil prices and the doubling of oil prices again in 1979 as the result of the Middle Eastern disturbances have further complicated the task of projecting future energy requirements. The sharp increase in prices for all fuels that has occurred in the past ten years has greatly stimulated energy conservation practices. Other events have also influenced energy demand, including, among others, a worldwide economic recession now in its second year, regulatory provisions covering environmental quality for air, water and land, increasing public opposition to the use of nuclear energy for the generation of electricity, the very recent reduction in the "real" price of oil as a result of a large world surplus of oil-producing capacity and, in the U.S., a shift in the past two years from a concern about natural gas supplies to one about finding new natural gas markets.

As a result of these factors, recent estimates of 1985 energy demand have been drastically reduced and range from 85Q to 108Q, a variation of 24% in a projection period of 9 to 11 years. [15/] However, based on past experience, and the March 1983 meeting of OPEC members, at which agreement on maintaining world oil prices and controlling production in the face of an oil glut was reached reluctantly, even the most recent estimates of total energy demand could be drastically altered.

Even more difficult to estimate is the share that each of the fuel forms will

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[13/] A Review and Comparison of Selected U.S. Energy Forecasts, Energy Policy Staff, Office of Science and Technology, December 1969.

[14/] 1 Quad (Q) = 10^{15} Btu.

[15/] For comparison, two projections made for 1985 in the 1969 Energy Policy Report were 118.1 and 119.6Q or about 20% higher than more recent estimates.

provide of total energy demand. Table 6 presents a series of projections of U.S. coal production [16/] made by major studies for 1985, 1990 and 2000, and published between 1976 and 1982. Estimates of coal production for 1985 range between a recent 1982 mid-range projection of 18.5Q to a high 1977 projection of 29Q. Recent estimates for 1990 -- a year of interest in connection with opening new western mines because of their long development time -- range from 22.6Q to 30Q.

Estimates of regional production of coal have received less attention than estimates of either total energy or total coal demand. The difficulty of making accurate estimates of regional coal production is greater than projections not limited by geographic or commodity assumptions, since a regional projection must consider a number of additional complicating factors. Among the most important of these are: the comparative heat content (Btu value) and other coal properties, distance from the consumer, transportation costs and the end uses for the coal. In addition, environmental and health and safety regulations affect the share that western coals will supply of the total coal demand in two ways: (1) the impact that such regulations have on costs of mining by different methods and under different geologic and climatic conditions and (2) the coal quality needs of the consumer in order to meet environmental (particularly sulfur oxide) regulations during use.

The projections that have been made of western coal production reflect these difficulties. For example, in 1976 in the National Energy Outlook, [17/] output of coal west of the Mississippi was projected to be 379 million tons (8.4Q) in 1985 and 586 million tons (13.0Q) in 1990. Just one year later, the Department of Commerce in January of 1977 [18/] estimated 1985 production of western coal at only 190 million tons (4.2Q).

[16/] Equivalent to coal demand since changes in stockpiles from year to year almost always involve small tonnages.

[17/] National Energy Outlook, Federal Energy Administration, 1976.

[18/] Forecasts of Likely U.S. Energy Supply/Demand Balances for 1985 and 2000 and Implications for U.S. Energy Policy, Domestic and International Business Administration, Department of Commerce -- P.B. 266, 240, January 20, 1977.

Table 6

Projections of Coal Production Made in Recent Major Studies
(in 10^{15} Btu/year - Q/year)

Study	1985	1990	2000
National Energy Outlook (1976)[1]	Low 22		
	Reference 23		
	High 28		
Dartmouth Coal 2 Study (1977)[1]	Reference 24		34
	High 29		50
Workshop on Alternative Energy Strategies (1977)[1]	Low 20		28
	High 26		51
Conaes Modeling Resource Group (1977)[1]	Low 16	19	23
	Reference 22	24	34
	High 27	30	55
National Energy Plan (1978)[1]	Reference 23	27	
	High 31		
Energy Information Administration, DOE (1979)[2]	20.8	29.1	39.4
Energy Information Administration, DOE (1981)[3]	Mid-range	23.5	
Energy Information Administration, DOE (1982)[4]	Mid-range 18.5	22.6	32.0

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[1] Adapted from Energy Modeling Forum "Coal in Transition 1980-2000," Vol. 1, Palo Alto, California: Stanford University, September 1978, p. 2.

[2] Energy Supply and Demand in the Mid-term: 1985, 1990, and 1995, Energy Information Administration, DOE, DOE/EIA-D102/52, April 1979.

[3] "Energy Projections to the Year 2000," Energy Information Administration, DOE, DE/EIA-PE-0020, July 1981.

[4] "Energy Projections to the Year 2000," Energy Information Administration, DOE/PE-0029/1, August 1982.

In connection with its continuing responsibilities in estimating energy production, capacity and anticipated demand, the Department of Energy makes a periodic survey of known operators of existing and planned large (over 200,000 tons/year) coal mines in the western United States. The results of surveys conducted in 1978 and 1980 are shown in Table 7. In both surveys, productive capacity[19] of western coal mines is expected to be much larger than projected demand, but the anticipated difference between productive capacity and forecasted production narrows by 1990.

The Office of Technology Assessment task force and other estimates[20] of demand for 1985 and 1990 for the six western coal states[21] are shown below.

Estimate of Demand for Coal from Six Western States

	Millions of Tons	
	1985	1990
OTA	303-315	413-463 [22]
1980 DOE - mid-range (Western Coal Survey)	356	661
DOE (NCM) - medium	331	523
ICF - Base	314	426

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[19] The report entitled "Western Coal Survey" notes that the "term 'productive capacity' is defined as the level of anticipated production based on technical feasibility, as well as individual expectations as to demand, regulatory approvals, etc. The term 'under contract' refers to coal for which a commitment has been made by a coal operator to supply a specific quantity of coal beginning at a specified time and over a stated time period or coal which is being produced for captive consumption....Contracts, however, can be cancelled, postponed, or accelerated."

[20] An Assessment and Development Production Potential of Federal Coal Leases, OTA, 1981, p. 103.

[21] Colorado, New Mexico, North Dakota, Montana, Utah and Wyoming.

[22] An estimate of 26 million tons for 1985 and 50 million tons for 1990 was added to the OTA estimates for North Dakota production.

Table 7

Projections of Western Productive Capacity, Anticipated Production and Coal Under Contract, 1985, 1988 and 1990
(Millions of Tons/Year)

	1980		1985		1988		1990	
Survey Data	1978	1980	1978	1980	1978	1980	1978	1980
Productive Capacity	284.8 (6.3Q)	259.7 (5.7Q)	545.2 (12.0Q)	502.9 (11.1Q)	609.9 (13.4Q)	691.8 (15.3Q)		770.3
Forecasted Production	203.5-211.0		323.5-368.0	342.5-369.2	376.0-463.9			652.5-670.1
Mid-range	207.0 (4.6Q)		343.7 (7.6Q)		427.4 (9.4Q)			(14.4Q-14.8Q)
Under Contract	241.9	251.3	354.5	354.9[2]	359.2[1]	402.3[2]		428.8[2]

[1] In addition, 19.5 million tons per year are expected to be used for gasification.

[2] Excludes synfuels projects not approved by the Federal Energy Regulatory Commission.

Sources: 1978 Data: "Western Coal Development Monitoring System," Resource Application, U.S. DOE, DOE/TIC-10249, April 1979.

1980 Data: "Western Coal Survey," Office of Coal Supply Development, U.S. DOE/RA-0045/1, January 1981.

The OTA estimates are significantly lower than the other three estimates shown above. From the methods and assumptions used in these projections, it is probable that the lower forecasts for 1990 will be more accurate and the most likely demand for western coal in 1990 may be in the range of 430 to 500 million tons per year.

6. Productive Capacity of Western Coal Mines

A yearly survey conducted by Coal Age reports estimates of what mine operators and owners believe is the current and projected capacity of their individual mines. The most recent estimate [23/] reports that the 1980 productive capacity in the six western states (only of mines that were to be expanded) totaled 142.5 million tons. The most recent DOE survey [24/] estimates the productive capacity of all western mines in 1980 to be 203.2 million tons. Estimates of the 1986 annual capacity are given in Table 8.

The Coal Age and DOE western coal survey estimates are for the productive capacity of all mines using federal and non-federal coal while the OTA estimate is only for that from federal coal leases. On the basis of these projections, the 1986 productive capacity of coal mines in the six western states ranges from a minimum of 332 million tons to a maximum of 457.5 million tons.

[23/] Coal Age, February 1982.

[24/] Western Coal Survey -- U.S. DOE, Office of Supply Development, DOE/RA-0045/1, January 1981.

Table 8

Productive Capacity of Coal Mines in Six Western States
(Millions of Tons)

	Actual 1979		1980			Start of 1986 (Estimate)		
						Productive Capacity		
	Total Production	Federal Coal[1,2]	Actual Production	Productive[3] Capacity	Productive[4] Capacity	DOE[3]	Coal Age[4]	OTA[6]
Colorado	18.1	16.0	18.8	21.1	8.0	54.1	30.9	29.4
Montana	32.5	27.4	29.8	31.9	20.5	65.6	43.8	46-48
New Mexico	15.1	8.4	18.4	19.2	6.2	34.2	32.3	16.8
North Dakota	15.0	14.1	17.0	17.9	10.4	38.2	33.2	27
Utah	11.8	10.4	13.2	14.7	10.1	36.9	26.2	30.2
Wyoming	71.0	67.5	94.9	98.4	87.3	228.5	191.5	183-189
Total	164.3	143.8	192.1	203.2	142.5	457.5	357.9 +50.0[5] 407.9	332.4-340.4

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[1] Federal coal is coal produced from mines that include a federal lease. Some of the production is from private coal produced from the same mine.

[2] Source: OTA - An Assessment of Development Potential of Federal Coal Leases, December 1981.

[3] Western Coal Survey, January 1, 1981, DOE/RA-0045/1.

[4] Coal Age, February 1982 - 1980 capacity of those coal mines whose capacity is to be expanded between 1981 and 1989.

[5] Estimated capacity of existing mines in 1980 that were not scheduled for expansion.

[6] Source: OTA, p. 121 and p. 139 (Coal from all mines with federal coal leases).

In 1979 total coal production in the six western states was 164.3 million tons. Of this, 143.8 million tons (88%) was from mines with federal leases [25] and 60.1 million (36.5%) was from federal coal leases alone. [26] The share of western coal from mines with federal leases has increased steadily since 1972 and is expected to be an even higher percentage of the total in future years. [27]

The increase in productive capacity between 1980 and 1985 of 215.4 million tons (for new mines and mines with expanded capacity) estimated by the Coal Age survey includes 104.4 million tons (49%) from new mines not producing coal in 1980 and 111 million tons from expansion of existing mines. The OTA estimates for 1986 show an increase in productive capacity over 1979 production from federal coal leases that ranges from 188.6 to 196.6 million tons. Of this increase, some 134.0-146.9 million tons would be from mines with federal coal leases that were producing in 1979 and only 41.7 to 56.6 million tons from mines whose mine plans are either pending or nonexistent. [28]

These estimates of future productive capacity must be used with caution. For example, the estimates of the 1986 productive capacity of coal mines for the six western states as projected by the 1978 and 1980 surveys conducted by DOE were:

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[25] Mines with part of the production from leased federal coal and part from private coal.

[26] OTA, p. 15.

[27] For the three western states of Colorado, New Mexico and Utah, the share of federal production increased from 25% of the total in 1972 to about 50% in 1980.

[28] See footnote 31 for definition of "mine plan."

1986 Western Coal Mine Productive Capacity
(Millions of Tons)

	1978 Survey 1/	1980 Survey 2/
Colorado	41.0	54.1
Montana	74.9	65.6
New Mexico	32.2	34.2
North Dakota	43.4	38.2
Utah	33.6	36.9
Wyoming	260.1	228.5
	485.2	457.5

1/ Western Coal Development Monitoring System, Office of Coal Supply Development, Department of Energy, DOE/TIC-10249, April 1979.

2/ Western Coal Survey, Office of Coal Supply Development, Department of Energy, DOE/RA-0045/1, January 1981.

In assessing the accuracy of productive capacity estimates, it should be understood that calculating the productive capacity of even existing coal mines has always proved to be difficult. Quantitative judgments of excess capacity depend upon assumptions with respect to the number of working shifts needed for maintenance rather than production (particularly important for underground mines), the number of days per year that mines can be successfully operated and the "normal" tonnage per shift.

Predicting the industry's future capacity is even more difficult because actual production experience is not available and the times when new mines still under construction will come onstream and at what rates are often adjusted by owners during construction as market conditions change.

In just two years, the estimates of the productive capacity for coal expected in 1986 in Wyoming declined by 31.6 million tons (14%) while the estimates for Colorado increased by 12.9 million tons (32%).

It would appear from using the data in Table 8 that total productive capacity in all western coal mines in 1986 would be about 400 million tons, of which approximately 340 million tons (85%) would be from mines with federal leases. Of the 340 million tons, about 295 million tons would be from mines that are now producing and 45 million tons from mines with pending or inactive mine plans. Of the 45 million tons (if the ratio of about 60% that now exists between federal coal and non-federal coal from mines with federal leases continues), about 27 million tons of the new production would be from federal resources not now being produced.

These estimates along with those for the 1986 demand for western coal and those for the federal resources that are subject to the diligence requirements of Section 3 of the FCLAA of 1976, will be used to analyze the impacts of implementing the provisions of Section 3.

7. Status of Current Coal Leases Issued Before August 1976

Table 9 is a reasonably complete tabulation of the current status of coal leases issued before August 4, 1976, and Appendix F describes the data bases used in its preparation and the limitations of the existing information. 29/ The 524 leases listed in the table cover about 773,000 acres. 30/ The tabulation divides the lessee companies into 13 different categories of business activities and gives the ownership of the leases, their state of development and the number and size of the leaseholds.

As the table shows, ownership of lease acreage is concentrated in electric utilities (20.3%) and energy companies (20.1%). The other major holders of federal leases are non-resource-related companies (11.8%), steel (7.9%), minor oil and gas (6.8%) and independent coal companies (6.3%). The "other" category of leaseholders (7.4%) has a very large number of owners and a relatively small amount of acreage. The "non-resource-related" category's share of total federal acreage was greatly increased by the Dupont Company's acquisition of Conoco, its share of total acreage rising from 4.5% to 11.8%.

29/ Table F-1 in Appendix F is an update (February 1983) of the status of selected leases. (Supplied by the National Coal Association.)

30/ The OTA Publication, "An Assessment of Development and Production Potential of Federal Coal Leases," reports on 565 federal leases covering 812,000 acres. This 4% difference in lease acreage coverage is small and is explained, in part, in Appendix F. The difference is too minor to affect the conclusions reached in this report.

Table 9. Status of pre-August 4, 1976 Federal Coal Leases
(as of December 1982)

	Producing Mine		No Production Approved Mine Plan		Pending Mine Plan		Inactive (AMW)[1]		Total	
	No.	Acres	No.	Acres	No.	Acres	No.	Acres	No.	Acres
A. Electric Utilities										
American Electric Power Co.	3	3,938					8	8,220	11	12,158
Arizona Public Service Co.							21	40,216	21	40,216
Black Hills Power & Light Co.	3	1,880					1	40	4	1,920
Idaho Power Co.	3	8,590							3	8,590
Iowa Public Service Co.	1	8,688							1	8,688
Montana-Dakota Utilities	3	4,400					2	3,512	5	7,912
Montana Power Co.	1	1,446			1	5,792	1	120	3	7,358
Nevada Power Co.							9	10,700	9	10,700
Pacific Power and Light	4	15,965	1	720			14	17,015	19	33,700
Public Service-New Mexico	2	5,032					7	13,294	9	18,326
Utah Power and Light Co.	4	1,920					11	5,694	15	7,614
TOTALS:	24	51,854	1	720	1	5,792	74	98,811	100	157,177 (20.3)
B. Energy Companies										
Atlantic Richfield[2]	5	9,630	2	4,925			3	7,755	10	22,310
Exxon Corp.[2]	1	4,977					3	10,113	4	15,090
Getty Oil Co.	4	6,770	3	1,883			1	1,360	8	10,013
Gulf Oil Corp.[2]	5	8,467	1	827			23	30,595	29	39,889
Mobil Corp.							2	4,000	2	4,000
Occidental Petroleum[2]	1	2,483			2	5,113	7	11,103	10	18,699
Shell Oil Corp.	1	599					2	2,461	3	3,060
Standard Oil-Indiana	1	408			1	43			2	451
Sun Co.[2]	1	6,550			1	2,416	7	23,268	9	32,241
Texaco Inc.							5	9,417	5	9,417
TOTALS:	19	39,924	6	7,635	4	7,572	53	100,039	82	155,170 (20.1)
C. Peabody Coal[3]	1	4,306	1	2,501			26	42,941	28	49,748
TOTALS:	1	4,306	1	2,501			26	42,941	28	49,748 (6.4)
D. Steel Companies										
Armco							11	17,806	11	17,806
Kaiser	1	1,367					8	13,250	9	14,617
Republic	1	1,280							1	1,280
Sharon	2	3,370					1	2,356	3	5,726
U.S. Steel	3	8,082	1	1,548			13	11,910	17	21,540
TOTALS:	7	14,099	1	1,548			33	45,322	41	60,969 (7.9)

Table 9. Status of pre-August 4, 1976 Federal Coal Leases (Continued)
(as of December 1982)

	Producing Mine		No Production Approved Mine Plan		Pending Mine Plan		Inactive (AMW)[1]		Total	
	No.	Acres	No.	Acres	No.	Acres	No.	Acres	No.	Acres
E. Independent Coal Companies										
Arm Leasing	2	2,078					3	770	5	2,848
Baukol Noonan	1	2,120							1	2,120
Cameron Coal Co.							3	4,464	3	4,464
Crest Coal Co.							2	400	2	400
Divide Coal Mining Co.	1	80							1	80
Garland Coal & Mining Co.			1	961			15	15,393	16	16,354
General Exploration	1	810			1	2,720	1	160	3	3,690
James Bros. Coal Co.			1	40			2	5,073	3	5,113
Mid-Continent Coal & Coke	2	3,458	6	3,284			1	680	9	7,422
National King Coal	1	160							1	160
North American Coal Corp.							4	4,559	4	4,559
Pacola Co.							1	960	1	960
Reliable Coal Mining			1	513					1	513
Wasatch Coal Co.			1	280					1	280
TOTALS:	8	8,706	10	5,078	1	2,720	32	32,459	51	48,963 (6.3)
F. Minor Oil and Gas Co.										
Anschutz			2	4,923					2	4,923
Ashland Oil & Hunt Interests[4]	11	12,136					3	1,920	14	14,056
Belco Petroleum							1	4,551	1	4,551
Consolidated Gas & Oil	1	160	1	80					2	240
Kiko Bell Mining Corp.							3	6,400	3	6,400
Kerr McGee Corp.	1	4,192	1	770			4	4,503	6	9,465
Petroleum Int. Inc.							3	9,107	3	9,107
Quaker State Oil Refining	2	1,585					2	2,553	4	4,138
TOTALS:	15	18,073	4	5,773			16	29,034	34	52,880 (6.8)
G. Unincorporated Individuals	1	82					23	29,043	24	29,125
TOTALS[5]:	1	82					23	29,043	24	29,125 (3.8)
H. Natural Gas Pipeline Co.										
Coastal Corp.[4]	1	2,200					2	400	3	2,600
El Paso Co.							16	22,647	16	22,647
Internorth Corp.	2	480	1	896			1	1,000	4	2,376
Northwest Energy Corp.	4	1,728							4	1,728
TOTALS:	7	4,408	1	896			19	24,047	27	29,351 (3.8)

Table 9. Status of pre-August 4, 1976 Federal Coal Leases (Continued)
(as of December 1982)

	Producing Mine		No Production Approved Mine Plan		Pending Mine Plan		Inactive (AMW)[1]		Total	
	No.	Acres	No.	Acres	No.	Acres	No.	Acres	No.	Acres
I. Non Resource Related Co.										
Dupont[2]	1	160			1	720	29	54,535	31	55,415
FMC Corp.							2	1,993	2	1,993
General Dynamics Corp.							3	5,403	3	5,403
General Electric Co.[2]	1	2,556	2	2,733			20	17,169	23	22,462
Monsanto Co.							1	1,752	1	1,752
W. R. Grace							2	4,022	2	4,022
TOTALS:	2	2,726	2	2,733	1	720	57	84,874	62	91,053 (11.8)
K. Metals and Mining Companies										
Amax	1	2,440					2	5,361	3	7,801
Asarco							5	9,076	5	9,076
Phelps Dodge							1	80	1	80
TOTALS:	1	2,440					8	14,517	9	16,954 (2.2)
L. Landholding Companies										
Carl International							1	360	1	360
Carroll County Coal							1	412	1	412
King Carmel Coal							1	240	1	240
Smith Holliday Assoc. Ltd.							1	80	1	80
Thermal Energy	1	6,336							1	6,336
Thompson Creek Coal & Coke	1	120							1	120
TOTALS:	2	6,456					4	1,092	6	7,548 (1.0)

Table 9. Status of pre-August 4, 1976 Federal Coal Leases (Continued)
(as of December 1982)

	Producing Mine		No Production Approved Mine Plan		Pending Mine Plan		Inactive (AMW)[1]		Total	
	No.	Acres	No.	Acres	No.	Acres	No.	Acres	No.	Acres
M. Other Leases										
American Colloid							1	80	1	80
California Portland Cement	1	1,548							1	1,548
Carbon Emery Bank							3	277	3	277
Cooperative Security Corp.	2	4,205					1	40	3	4,245
Grace Co.	1	3,470					1	961	2	4,431
Eastern Gas and Fuel							4	3,218	4	3,218
Energy Reserves							4	7,850	4	7,850
Floor/St. Joe			1	280					1	280
Geo Resources							1	320	1	320
Ideal Basic							6	10,950	6	10,950
Midcontinent Lime Tire Co.			2	1,712	3	2,020			5	3,732
Monolith Portland Cement							1	173	1	173
Northwest Industries	1	965	2	3,181			4	6,795	7	10,941
Peter Kiewit	2	6,176	1	1,408			2	608	5	8,192
Standard Equipment							1	680	1	680
Texas Industries Inc.							1	120	1	120
TOTALS:	7	16,364	6	6,581	3	2,020	30	32,072	46	57,037 (7.4)
N. Uncategorized Leases										
Amax Corp.							2	280	2	280
CP Coal Div.							2	480	2	480
Cert							2	160	2	160
Granite Creek Coal							1	280	1	280
McKinnon Marital Trust	2	4,469					5	6,355	7	10,824
Midwest Mining							1	2,557	1	2,557
Ruby Construction							1	146	1	146
Western Fuel Assoc.			1	2,557					1	2,557
TOTALS:	2	4,469	1	2,557			14	10,258	17	17,284 (2.2)
GRAND TOTAL:	96	173,907 (22.5)	33	36,022 (4.1)	10	18,824 (2.4)	385	544,509 (70.4)	524	773,262

[1] Active Mine Works.

[2] See Table F-1, Appendix F for February 1983 data supplied by companies.

[3] Peabody Coal should be included in Category E.

[4] These leases now held by Arch Minerals (February 1983) and should be included in Category I.

[5] Harry Wittington Lease - 20,700 acres.

This detailed table indicates very clearly that the current ownership is almost exclusively by large companies with a current or eventual need for the coal resources for their own use or companies with the financial capability and technical know-how to produce coal for sale to large users. The combined acreage in ownership by those who do not have this capability -- the smaller independent coal companies, the landholding companies and the smaller miscellaneous owners -- is only on the order of 30,000 acres, or less than 4% of the total acreage. Some of that coal may be used by small mining companies to supply local coal demand and is not necessarily a speculative holding.

Only two large lease holdings are in private hands: the lease of Harry Wittington which contains 20,700 acres and the leases of McKinnon Marital Trust which contain nearly 11,000 acres.

Of the leases in current production, 29.8% are owned by electric utility companies (Table 9), 22.9% by energy companies, 10.4% by minor oil and gas companies, and 8.1% by steel companies. The other 28.8% of the acreage under production is distributed among a large number of owners in all the other business categories.

OTA did a similar analysis of the status of federal coal leases using a slightly different geographic coverage and a somewhat different data base. A comparison of the two analyses is shown below.

	OTA Data		This Report
	Leases	Billions of Tons	Leases
Total	502	16.2	524
Approved mine plans	182	7.3	96 Production 33 No Production
Pending mine plans	117	2.5	10
Undeveloped leases	203	6.4	385

The OTA analysis does not include the Oklahoma leases, and includes 502 of the 565 leases in the 6 western states of Colorado, New Mexico, North Dakota, Montana, Utah and Wyoming. The OTA analysis also makes no distinction between mines with approved mine plans that are in production and those that are not. Included in the category of "approved mine plans" in this report are those mines that are in production even if the Minerals Management Service records show no approved mine plan.

The major difference between the two analyses is in the number of mines with pending mine plans. The 10 mines in this category identified in this report are those reported in the data base of the Minerals Management Service as leases for which a mine plan has been received but has not yet been approved. OTA used mine plans on file with the Office of Surface Mining on September 30, 1980, as the method for determining which mines should be placed in the "pending" category. 31/ Since all mines not in production are used in Part 8 below to estimate productive capacity of federal leases in future years, the differences between OTA and this report are not critical to the analysis.

8. Effects of Section 3 Provisions of the FCLAA of 1976

Section 3 of the FCLAA requires that all coal leases issued before August 1976 be producing commercial quantities of coal by August 1986 or the Secretary of the Interior cannot issue a new lease to the owner for any mineral covered by the Mineral Leasing Act of 1920. Under the current regulations, the term "commercial quantities" is defined as the production of 1% of the recoverable coal reserves in the lease. No extension of this deadline may be granted by the Secretary for any reason.

Effect on Lease Owners

Several alternative actions are available to owners of Section 3 leases. The lease can be developed to meet the Section 3 requirements, it can be relinquished, 32/ it can be assigned or it can be retained and not developed by the current leaseholder.

Compliance with Section 3 will permit the lessee to bid on other federal lease offerings of coal, oil, natural gas, oil shale, potassium, phosphate, or other mineral

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31/ "Before coal can be produced from federal land, a mine plan must be submitted to and approved by DOI. Hence, mine plan status provides a convenient yardstick by which to measure lease development. There are two separate requirements for mine plans for federal leases. First, a mine plan must be submitted to comply with the general provisions and regulations under the Mineral Leasing Act of 1920 (MLA), as amended, and secondly, a mining and reclamation plan must be submitted for all surface and underground mines to comply with the Surface Mining Control and Reclamation Act of 1977 (SMCRA), whether or not federal lands are involved. Under DOI directives, a single mining plan is submitted to OSM to meet both MLA and SMCRA requirements. However, OSM and the Geological Survey each retains its separate responsibilities for enforcement and permit approval." OTA report, p. 53.

32/ There are legal questions concerning "how" and "when" a lease can be relinquished.

resources whose disposal is governed by the Mineral Leasing Act of 1920. However, if development work has not yet started as of the date of this report (March 1983), it would be impossible on most leases to be producing "commercial quantities" of coal by August 4, 1986. Even lease owners who have done considerable preliminary development work may be unable to meet the 1986 deadline (see Part 10). Thus, there will be a period when the leaseholder, regardless of his plans and the extent of his investment, would be unable to bid on federal leases. This can create an economic burden by forcing early abandonment even of an operating mine which needs access to "production maintenance," "hardship" or "bypass" [33/] leases. Such action would result in a loss of revenue to the government and inefficient use of federal resources.

Furthermore, it would be impossible for all holders of Section 3 leases to develop their holdings and market the coal should all the Section 3 leases achieve "commercial production" by 1986. For this reason, when the provisions of the Section 3 ban become applicable, a majority of the owners of these leases will be adversely affected. In Part 6 it was estimated that the productive capacity of all mines in the six western states would be about 400 million tons at the beginning of 1986 or an average for 1985 of about 368 million tons. [34/] With the 1985 demand for western coal (see Part 5) expected to be 315 million tons, there would be excess productive capacity of 53 million tons in 1985 even without development of those Section 3 leases for which there are currently no development plans.

If all the Section 3 leases were producing 1% of their recoverable reserves in 1986 there would be 89 million tons from this source alone. [35/] Since 25 million [36/] tons of this productive capacity are already included in the 368 million tons of total capacity estimated above, there would be a total average productive capacity in 1985 of 432 million tons, or an excess capacity of about 120 million tons.

[33/] "Bypass coal" means an isolated coal deposit that cannot, for the foreseeable future, be mined economically and in an environmentally sound manner either separately or as part of any mining operation other than that of the applicant.... C.F.R. (1982 edition) Title 43, Sec. 3400.0-5.

[34/] Arrived at by subtracting from the 1986 capacity one half of the 64 million tons of capacity expected to be added during 1985.

[35/] OTA estimates 8.9 billion tons of recoverable coal.

[36/] See Part 6. The value of 27 million tons of estimated production of federal coal in 1986 adjusted to a 1985 average production value.

With this probable supply-demand situation in 1985, those Section 3 leaseholders with the least financial resources would be unable to raise the funds to open mines and meet the Section 3 requirements by 1986. In fact, many of the current leaseholders, faced with these market projections, would be unable to make the large investments needed to develop a competitive mining operation. Except to supply small local markets, large mines are needed in the west to achieve economies of scale to meet competition and they cannot be justified unless most of the mine's output is under contract. Without such contracts, the funds required to open mines could not generally be raised in capital markets. The leaseholders who would be unable to develop their properties under these circumstances are some of the smaller coal companies, unincorporated individuals, leaseholding companies and some of the lessees listed as "other" and "uncategorized." But these are the leaseholders least likely to be adversely affected by the Section 3 provisions since they do not normally compete for new federal mineral leases. As a result, they could retain their undeveloped coal leases (speculate?) until the market is more favorable without the serious adverse economic impacts imposed by the Section 3 provisions that are directed specifically toward encouraging early production.

The bulk of the Section 3 leaseholders who are in a position to develop leases when market conditions warrant are those who normally compete for leases for federal resources of all kinds. To be able to acquire new leases these owners would have to sell their Section 3 coal leases under very unfavorable market conditions, or forfeit them. As discussed above, a large excess productive capacity in 1985-86 is already expected even without the added production of the Section 3 leases. The results of the 1981-1982 sales (Table G-1, Appendix G) confirm the softness in the market. Competition was generally weak and would have been virtually non-existent without the bidding of Section 3 leaseholders.

The already weak market for leases would be further depressed by the enormous quantities of new coal resources that could come on the market over a short period of time. Any company purchasing a pre-1976 coal lease is faced with being disqualified from acquiring new federal leases for coal, oil, natural gas, oil shale and other minerals until the diligence requirements are met on the lease. Hence, if the company acquired a lease on which development had not been started, it could not bid on federal resources for from 5 to 12 years, the time required to install production capacity to meet diligence requirements.

Excluding speculators, the pool of potential buyers for the large Section 3 leases would be restricted to a limited number of potential purchasers who have the financial resources and experience in the coal industry to develop mines and market coal. These are precisely the companies already holding large pre-1976 coal leases. If they were not among these lessees, they would likely be reluctant to acquire a lease that would preclude their early participation in lease sales for minerals covered by the Mineral Leasing Act of 1920.

The alternative to developing, selling, or forfeiting the lease -- retaining the pre-1976 coal lease but without development -- would disqualify the company from bidding on new lease offerings. This could adversely affect the company's future operations, would reduce the revenues to the government from future federal mineral lease sales (by removing potential bidders) and would seriously affect the efficient management of federal mineral resources.

Disqualification from acquiring new leases because of ownership of a pre-1976 lease can place a major economic burden on a lease owner who has commercial production of minerals from another federal lease but who needs to acquire a new federal lease to keep that mine in operation. The importance of being able to maintain the efficient production of both federal and private resources was recognized during the coal leasing moratorium when exceptions were made for the issuance of new leases "to maintain existing mines or to supply near term production to satisfy existing market demands." 37/ This practice has been continued under the current leasing regulations with coal sales designed to meet "production maintenance" and "hardship" requirements and to conserve natural resources by offering "bypass" lease sales.

Retaining a lease without development, in order to have what is regarded as an adequate inventory, would be the normal practice in the coal industry (see Part 4). Most of the companies holding Section 3 leases -- steel, energy, electric utilities, large coal firms and gas pipelines -- maintain these reserves for future needs, exactly as they treat their private holdings. Under normal circumstances, the leaseholders would not dispose of their holdings just because they were unable to meet a timetable unrelated to their needs.

37/ Secretarial Order No. 2952, February 13, 1973 (Department of the Interior).

The Section 3 leases were acquired in good faith before the new terms were imposed by the 1976 FCLAA and enforced disposal would impose economic hardships on leaseholding industries, some of which are already in a depressed economic state (i.e., steel, electric utilities and coal).

Effect on Federal Lease Sales

Appendix G contains an analysis of (1) federal coal lease sales since the moratorium on coal leasing was lifted, (2) a random sample of oil and gas leases offered during a part of 1981 and 1982, (3) sales of other leaseable minerals, and (4) the oil shale lease sales of 1974.

Since only a few lease sales for "other mineral" resources have been conducted in recent years, Appendix G also discusses the current ownership of federal leases for these resources that were issued in the past under the Mineral Leasing Act of 1920. The current ownership of pre-1976 coal leases is shown in Table 9 and discussed in the text in Part 7.

The thirteen general coal lease sales, Table G-1, have not produced much competition primarily because particular leases are considered attractive and economical to mine by only one company. In two of the sales, two lease offerings received six bids and two received five bids. In two other sales the competition was somewhat stronger -- 19 bids on 4 leases and 8 bids on 2 others. The balance of the lease sales had little or no competition. Overall either no bid or only one bid was received on nearly 60% of the leases offered.

Whatever competition there was for federal coal leases was aided greatly by the holders of Section 3 leases. They were awarded 20 of the 32 leases on which bids were received. They also made at least 16 unsuccessful bids on 12 other coal leases. Without their participation, federal revenues from coal lease sale bonuses would have been much smaller.

As Table G-2 in Appendix G shows, Section 3 leaseholders have been highly instrumental in maintaining effective competition in federal mineral lease sales of all types. They were active bidders in at least 20 of the 35 onshore oil and gas lease sales analyzed, submitting a minimum of 48 bids; they were high bidders on 6 of the 8 other mineral resource sales held recently (Table G-3) and are leaseholders for 72% of federal leases of four of these resources and 21% of the fifth (Appendix G-Text).

While collectively the bonuses for leases for these resources are large, the most dramatic example of the importance of Section 3 bidders in maintaining competition for federal leases is in the results of the 4 oil shale lease sales of 1974 (Table G-4). For the lease offering receiving the largest bonus bid ($210 million), 7 of the 8 bidders capable of developing the resources were Section 3 leaseholders (or consortia with at least one Section 3 leaseholder). Of the 8 bids received for the remaining 3 leases, 4 were by companies affected by Section 3 provisions. The highest bidders for all 4 of the leases were companies or consortia of Section 3 leaseholders with a total bonus bid of $449 million.

From Appendix G, it is apparent that Section 3 leaseholders are the key to maintaining effective competition in the lease sales of federal resources. Should these leaseholders be unwilling to face the economic penalties of giving up their pre-1976 leases (rather than developing them), then the value of federal resources offered for sale is likely to be seriously depressed. In the case of bypass and production maintenance leases, inefficient use is a probable result.

Effect on Federal and State Revenues

Receipts (filing fees, bonuses, royalties, etc.) from activities associated with the use of federal mineral resources make a significant contribution to state and federal revenues. Table 10 tabulates this income for 1982 for all leaseable minerals for each of the states in which they were produced. The total for 1982 was nearly $1.5 billion of which 90% was returned to the states -- 50% directly and 40% indirectly through contributions to the Reclamation Fund.

Based on the discussion in the section above, elimination of Section 3 leaseholders from competitive bidding on federal resources would depress the total income from such sales and would have a serious impact not only on federal revenues but also on such income for nearly all of the western states -- particularly Wyoming, New Mexico and Utah. Since a larger share of domestic production is expected to come from federal resources in the future, even greater losses in revenues will result from the disqualification of some potential bidders by the Section 3 provisions.

Table 10

Total 1982 Onshore Mineral Receipts Collected

($000)

	Oil & Gas*	Coal	Other	Total
Alaska	80,250	2	2	80,254
Arkansas	44,883	0	5	44,888
California	60,030	0	14,621	74,651
Colorado	73,415	16,558	894	90,867
Montana	42,818	7,609	776	51,203
Nevada	23,472	0	1,986	25,458
New Mexico	283,015	9,689	7,810	300,514
North Dakota	53,797	1,257	0	55,054
Utah	196,821	9,602	766	207,189
Wyoming	376,403	24,457	7,599	408,459
All Other States	72,551	1,680	5,801	80,032
Total	1,307,455	70,854	40,260	1,418,569

* Includes Filing Fees.

For every dollar collected, 50¢ are returned to the state in which the money is collected (except in Alaska, where the state receives 90¢); 40¢ are deposited in the Reclamation Fund, to be spent on water projects in the 17 Western states; and 10¢ are returned to the U.S. Treasury.

Source: Budget Office, Department of the Interior.

ISSUES RELATING TO DILIGENT DEVELOPMENT AND CONTINUED OPERATION REQUIREMENTS

9. Current Provisions and Their Impacts

Under the Mineral Leasing Act of 1920, coal leases were issued for an indeterminate period "upon condition of diligent development and continued operation of the mine or mines, except when such operation shall be interrupted by strikes, the elements, or casualties not attributable to the lessee..." The provisions requiring continued operation could be waived by the Secretary upon "payment of an annual advance royalty upon a minimum number of tons of coal, which in no case shall aggregate less than the amount of rentals...." Prior to the passage of the FCLAA, the actual practice of the Department of the Interior was to make the rental charge the only cost of holding a lease. In effect, the provisions of "diligent development" as well as the granting of waivers by the payment of advance royalties were both treated as having been satisfied by the payment of rentals.

The FCLAA made significant changes in the diligence provisions of the Act by requiring that "any lease which is not producing in commercial quantities at the end of ten years shall be terminated." The present law also requires that all reserves subject to these leases be mined within forty years.

Under current regulations, the definition of "commercial quantities" is the production of 1% of the recoverable resources of the lease. The regulations contain no authority for the Secretary to waive that requirement for any reason. Thus, post-1976 leases must be terminated at the end of 10 years even if very large investments have been made but production was not attained for any reason -- strikes, the elements, unexpected geological conditions or even non-delivery of necessary equipment.

In its recent report [38], the Department of Justice not only supports relaxation of the diligent development requirement of the FCLAA but would prefer that it be eliminated. The basis for this recommendation is that for a competitive market to exist and operate efficiently, adequate reserves must be available to a number of different competitors who would be able to supply potential customers. For the western coal market, which is mainly directed to supplying the electric utility industry, very large reserves are required for each potential supplier because coal-fired electric generating plants being constructed in the west consume millions of tons of coal per year and are expected to be operated for 30 years or more. Sufficient reserves must be available to each potential supplier to assure the consumer that he can rely on sufficient coal for the life of the plant.

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[38] Competition in the Coal Industry, Report of the Department of Justice, December 1982.

Under present diligent development requirements, it would be nearly impossible for a supplier to develop a market for the coal after a lease is awarded and still meet the "commercial production" requirement in the allotted time. Therefore, a potential consumer must be identified before the supplier is even certain that a satisfactory reserve can be acquired. If producers cannot retain reserves for reasonable periods, then consumers will often have to settle for a supplier who can deliver coal even if it is under sub-optimum conditions and at higher costs than if there were a number of competitive suppliers.

In addition to these reasons for eliminating or, at least, granting more flexibility in administering the diligent development requirements, there are several practical reasons for doing do. In Part 10 that follows, the time to develop a new large western strip mine is estimated to be at least 7 years — often longer. Because of the problems involved in bringing a large surface mine onstream, a maximum 3-year leeway (10-year requirement and minimum of 7 years to develop the mine) appears to be an unrealistically short time to allow a developer if there are no provisions for waivers in the event of delays.

The potential for delays resulting from external causes is explicitly recognized by the law in the case of continued operations of a mining property. As was noted above, if for example, the operation of the mine is interrupted by strikes, the elements, or casualties not attributable to the leaseholder, the Secretary has the authority to waive production by permitting the lessee to pay advanced royalties on a minimum number of tons.

Developing a new coal mine can be subject to the same adverse events as an operating mine, but in addition, delays can be caused in reaching commercial production by the special requirements involved in opening a new mine. Therefore, granting authority to the Secretary to waive the date for the start of commercial production would appear to be even more justified than for continued operation. It would also protect developers from the potential loss of large investments in the event that a lease could not be brought into operation because of unforeseen and uncontrollable events but after large investments had been made. Under current legislation, bidders on new lease offerings must take this potential into consideration. They discount their bids to reflect this risk, thus lowering the value of federal resources.

10. Time Requirements to Develop a Large Western Coal Mine from a Federal Coal Lease

With the exception of those leases being offered as "small business set asides," the federal coal lands expected to be leased in the future will contain sufficient coal reserves to support the large-scale mining operations needed to be competitive in the highly concentrated western coal markets. These mines utilize large-scale equipment that normally cannot be bought "off the shelf" and must meet a variety of regulatory and permitting requirements before coal production can be initiated. Because the equipment and legalities are the two indispensable elements in developing any large new coal mine (whether from federal or private coal resources), they have been given serious consideration by those producers faced with meeting a deadline for supplying coal from a new mine.

As noted above, the Office of Technology Assessment reports that the time required to bring a lease into commercial production can vary from 5 to 12 years. Besides market considerations (discussed below) which can result in either acceleration or deceleration in mine construction time, the major factors that affect the time estimates are (1) how much preliminary exploration and drilling, if any, have been conducted before the final decision to open a mine is made, (2) the geological conditions, (3) the type of mining -- underground or surface, (4) the technologies selected, (5) the mine capacity to be developed, (6) the availability of the equipment that will be used and (7) the time required to obtain the multitude of federal and state regulatory approvals and permits needed.

Regulatory and permit approval time is particularly difficult to estimate for a coal company planning a new mine. (See Appendix H for listing of typical federal and state agencies that can be involved.) It will vary from state to state, depending on the complexity of state regulation and permitting requirements, and among the agencies, with fluctuations determined in part by staffing adequacy and workload. In almost all cases, delays originating from these causes are difficult for the applicant to remedy. In addition, regulations and permitting procedures have frequently been modified during the process, requiring the applicant to make revisions in response to these changes and essentially to submit a new application. Regulatory approvals have often been held up for long periods by court actions taken by litigants objecting either to the particular permit application or to broader issues relating to the lease under consideration. In such cases, the timetable for approval can depend upon the schedule of the courts.

With this large number of often interrelated variables affecting leasing times, it is not surprising that the OTA estimate for developing a new mine had such a wide time range -- 5 to 12 years. While everyone will admit that mines cannot be opened quickly, there are major disagreements among the parties involved -- the coal industry, state agencies, federal agencies and groups representing the public -- about what the "real" required times are. Unfortunately, the issue of "time to develop" the mine has often been a surrogate for disagreements about the necessity for the resource development, the social and environmental impacts, who is to blame for the delays and the "purity" of their motives.

Because of the many factors that determine development time and the local variability at every new mine, it is impossible to generalize not only about the length of time required but also about the causes of the delay and the responsibility of the participants. Each new mine represents a unique case that must be evaluated individually. It is possible, however, to estimate a relatively small range of minimum development times, provided one assumes that (1) the planning and development is done correctly and in a timely fashion by the coal company, (2) the regulatory and permitting agencies are able to carry out their reviews efficiently and promptly, (3) there are no changes in the regulations during permitting and (4) there is no intervention by local officials or other groups. Maximum times are impossible to estimate since some planned mines may never go onstream.

Probably the major reason for the wide range of mine development time estimates is that different "zero times" for the estimates have been used. Various assumptions have also been made with respect to the factors that must be considered and thus, the time required to conduct environmental studies; when design, construction, training and other support activities can be undertaken; what development activities can be conducted simultaneously; how much detail and procedural complexities are involved with regulatory and permitting processes; and how much time the state and federal agencies normally take for approval.

Published information on mine development time consists mostly of a listing of the dates when events occurred in the development of a particular mine. As noted above, this information may be unique for a given mine and may or may not be useful more generally. Furthermore, data stimulated by some frustrating experience may add more distortions to a "normal" mine development timetable.

The preconstruction time estimates have the widest range of uncertainty, with market development being the most variable. An operator planning to open a new mine can choose among several different approaches with respect to marketing the output: (1) the company can completely develop the mine in anticipation of negotiating a contract for sale of the coal, so that it is ready to be produced and shipment can be started when a contract is signed, (2) he can do all the preliminary work but not start actual construction until a contract has been signed, or (3) he can undertake only the assembly of a potential mineable coal property until the contract is signed.

Each of these strategies relating to marketing presents a different financial exposure to the owner and would normally imply different overall development times from the time a decision is made to enter the market until the mine is in full production.

The maximum financial risk to the operator is for option (1) above. A much smaller risk but one that still involves an expenditure of millions of dollars for a large mine is associated with option (2). Option (3) presents the smallest risk. The financial exposure for each of these options will be different for each mine site and will vary as well with the design and capacity of the mine. Because of the much smaller financial risk, most operators would select the third option — the one allowing for the longest development time.

To assemble a mineable coal package when a federal lease is involved extends the total time for planning a new mining facility. As a practical matter, the operator must still find a potential consumer for the output of the mine (both quantity and quality of coal) for whom transport facilities are available and costs permit the coal to be moved and delivered competitively.

If preliminary contract negotiations appear favorable between the operator and consumer (the time required for these negotiations can be highly variable), the operator will obtain permission to test drill a federal lease that he plans to nominate for sale by the Department of the Interior. This exploratory drilling is not adequate for marketing purposes but is needed to evaluate if the lease could provide the resources needed and to estimate the bonus bid that should be offered. The time required for this step can normally vary from one to two years.[39] The operator will then nominate the tract for a lease sale and must await the sale. As with the other steps in developing a mine, the time between nomination and sale can be highly variable but a period of at least one year must be allowed.

If the operator is the successful bidder for the lease offered, he can now negotiate a firm contract with the potential consumer, or he may be obliged to complete the drilling exploration progam to satisfy the consumer or to develop the basis for estimating more precise mining costs for his own negotiating purposes. These two steps may require another one or two years.

This stepwise method of negotiating between producer and consumer is characteristic of a situation in which the operator must acquire the resource or where the preliminary work has not been done on a resource already under his control.

Except for permitting and the satisfaction of NEPA requirements, there is considerable agreement about the time required to prepare a mine plan, design and construct the mine and its support facilities and reach full production.

Appendix H contains extracts from publications that report on the experience of the time that was required to bring six new mines into full production, and an illustrative schedule for the sequencing of steps and times required to develop a new mine. These examples are summarized below:

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[39] The drilling program must meet provisions of the Surface Mining Control and Reclamation Act, drilling rights must be acquired from the state and private owners of unacquired sections. Also, surface rights must often be obtained.

	Elapsed Time Years	Period Covered
Shell - Buckskin Mine (Wyoming)	8	Acquisition of lease to anticipated production of tonnage to meet diligence requirements
Shell North Rochelle Mine (Wyoming)	3+	Conveyance of lease to approval of mine plan by state
Eureka Energy Company Sage Point (Utah)	7	Acquisition of property to estimated start of production
Exxon - Rawhide Mine	10.5	Acquisition of lease to initial production
NERCO - Spring Creek (Montana)	4	Design and construction to production
ARCO - Black Thunder	10	Acquisition of lease to start of production
Illustrative western mine development schedule	15	Assemble "mineable package" to full production

From the data in this table and from the text of the publications cited in Appendix H, it appears that under favorable conditions the time from the acquisition of a lease to approval of a mine plan would be about 3 years and from design and construction of the mine to full production would require about 4 years, for a total of 7 years. Experience indicates that actual minimum times are somewhat longer, about 9 years, due to unpredictable delays during the long and complex mine development process. Obviously, even longer periods are required if delays are introduced by special permitting problems or if the owner decides on a stretch-out in mine development.

APPENDIX A

Table 74.—Federal Coal Leasing Amendments Act of 1976: Summary of Major Provisions

Sec. 2	All leases are to be sold by competitive bid with 50 percent of lands offered in any year to be awarded under a system of deferred bonus bidding and a "reasonable number" of tracts are to be reserved for leasing by public bodies. No bid may be accepted for less than the fair market value of the tract offered. Minimum lease size is changed from 40 acres to such size that "will permit the mining of all coal which can be economically extracted".
Sec. 3	The Secretary shall not issue a lease to a lessee who has held a lease for ten years (after passage of FCLAA) without producing coal in commercial quantities. All lands to be leased must be included in a comprehensive land use plan. DOI must consult with State and local governments and provide opportunities for public hearings if requested in preparing land use plan. Secretary must consider the social, economic, and other impacts on the communities affected and provide an opportunity for a public hearing before a lease is issued. DOI must obtain consent of Federal surface management agencies outside DOI before leasing lands under their jurisdiction. DOI must consult with State Governor before leasing National Forest lands. Advance notice must be given of competitive lease sales including publication in local newspapers. No mine plan for leased lands may be approved unless it provides for maximum economic recovery of coal within the tract. All coal leases are to contain provisions requiring compliance with the Federal Water Pollution Control Act and the Clean Air Act.
Sec. 4	Repeals, subject to valid existing rights, provision allowing noncompetitive leasing through issuance of prospecting permits and preference right leases. Establishes a system of nonexclusive exploration licenses. Licensees must furnish all data acquired to Secretary, however, information is kept confidential until after the area is leased.
Sec. 5	Repeals, subject to valid existing rights, provision for collective contracts for exploration, development and operations. Substitutes concept of Logical Mining Unit (LMU). Allows consolidation of Federal leases and non-Federal lands into single LMU if maximum economic recovery is served. Lease terms in LMU may be modified so that requirements imposed on leases are consistent. Pre-FCLAA leases may be included in LMU with consent of lessee. Aggregate production from LMU may be used to meet diligence and continued operation requirements. Mining plan approved for LMU must provide for depletion of LMU reserves in 40 years. LMU may not be larger than 25,000 acres.
Sec. 6	Amends section 7 of MLA to provide that leases are for an initial period of 20 years with readjustments at the end of the initial term and every 10 years thereafter. Any post-FCLAA lease not producing in commercial quantities at the end of 10 years shall be terminated. Minimum royalty for coal mined by surface methods shall be 12.5 percent; with a lesser royalty as determined by the Secretary for coal recovered by underground methods. Allows payment of advance royalties (determined by a fixed reserve to production ratio) in lieu of continued operation; however, advance royalties may not be accepted for more than 10 years during the period of any lease. Requires submittal of a mining and reclamation plan within 3 years after the lease is issued; Federal surface management agency must consent to DOI approval of mine plan.
Sec. 7	Establishes program for comprehensive coal exploration program for Federal lands to support land use planning and leasing operations. Information from coal exploration program, except for certain proprietary data, is to be made public.
Sec. 8	Requires annual reports to Congress by the Secretary of the Interior on the management of Federal coal leases and by the Attorney General on competition in the coal industry, including an analysis of whether the antitrust laws are effective in preserving or promoting competition in the coal or energy industry.
Sec. 9	Amends the revenue distribution provisions of section 35 of the MLA by reducing the amount paid to the Reclamation Fund from 52½ percent to 40 percent (and raising the amount paid to the States by 12½ percent.) Directs that States may spend their share of the revenues as each State Legislature provides giving priority to the needs of communities impacted by Federal mineral leasing.
Sec. 10	Requires Office of Technology Assessment study of Federal coal leases.
Sec. 11	Amends section 27 of the MLA to provide that no entity may control more than 46,080 acres of coal leases and permits in any one State nor more than a total of 100,000 acres in the United States. Lessees controlling more than 100,000 acres on passage of FCLAA may continue to own their leases, but may not acquire more leases until the total acreage controlled is less than 100,000 acres. The definition of a lessee entity is broadened to include a person, association, or corporation, or any subsidiary, affiliate or persons controlled by or under common control with such person, association or corporation.
Sec. 12	Authorizes leases to governmental entities of acquired lands set aside for military or naval purposes.
Sec. 13	Repeals, subject to valid existing rights, authority to lease an additional 2,560 acres of coal lands to a lessee who has exhausted the reserves in the original lease. Subsititutes new provision allowing noncompetitive leasing of up to 160 acres as a modification to a contiguous existing lease.
Sec. 14	Amends section 39 of MLA to limit authority of Secretary to waive suspend or reduce advance royalties.
Sec. 15	Requires Secretary to consult with Attorney General before drafting rules and regulations or before issuing, renewing or readjusting leases as to whether the proposed action would create a situation inconsistent with the antitrust laws.

SOURCE: Office of Technology Assessment.

APPENDIX B

RECENT CORPORATE OWNERSHIP CHANGES

The Tables in this report (except for Table 9) were prepared before some major corporate ownership changes occurred which would change the number and average of lease holdings by the different business activity categories used for classification purposes. Table B-1, lists these changes in corporate ownership and indicates the new "business activity" and "business organization" categories that resulted. These changes moderately increased the share of lease ownership by energy and non-resource related companies at the expense of the share held by independent coal companies. The purchase of Conoco by Dupont shifted about 5 percent of the outstanding leases included in Table 9 from the "energy company" category to the "non-resource related" category.

Table 9 reflects those corporate changes.

APPENDIX B

Table B-1. Changes in Federal Coal Lease Ownership Because of Recent Major Corporate Ownership Changes

Corporate ownership[1] change	Number of leases involved	Number of acres involved	Change in business activity category	Change in business organization category
Kemmerer Coal Co. Purchased by Gulf Oil Corp.	26	32,191	From Kemmerer Coal Co. to energy companies	No Change
St. Joe Minerals Corp. purchased by Fluor Corp.[2]	1	280	From metals and mining companies to nonresource-related diversified companies	No change
Energy Fuels Corp. purchased by Getty Oil Corp.[3]	5	4,521	From independent Coal companies to energy companies	From independent corporations to subsidiaries
Belden Enterprises purchased first by Grand Mesa Coal Co., which was bought by Eastern Gas and Fuel Associates jointly with Nicor, Inc.	1	42	From independent coal companies to "other" and natural gas pipeline companies	From independent corporations to multicorporate entities
CONOCO, Inc. purchased by E. I. du Pont de Nemours & Co.[4]	31	43,442	From energy companies to nonresource-related diversified companies	No change
Cities Service purchased by Occidental Petroleum Corporation	3	3,580	No change	No change
Sum[5]		84,056		

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[1] The table does not reflect lease ownership changes that have occurred because of the assignment of leases after January 1, 1980 (except for the Cities Service purchase).

[2] The lease involved is held by a subsidiary, Anchor Coal Co.

[3] The leases involved are now held by a subsidiary, Getty Mining Co.

[4] The leases involved are held by Consolidation Coal Co.

[5] Ten percent of total leased federal coal acreage.

SOURCE: Office of Technology Assessment and this report.

APPENDIX C

Implications of Lease and PRLA Ownership Patterns and Trends

The OTA analysis of the historical roles of different business activity and organizational structures in coal leasing suggests several observations.

Concentration

The data obtained in this study reveal little evidence of a concentration of lease or PRLA holdings among fewer companies. The number of participants in leasing nearly doubled from 1950 to 1980, from 84 to over 160. The four largest leaseholders in 1950 controlled 32 percent of all land under lease while the top eight controlled 34 percent in 1980. Hence the number of participants has increased and the concentration of ownership among the top companies has remained nearly unchanged. The number of PRLA holders has increased from 37 in 1970 to 47 in 1980.

Other evidence suggesting the absence of concentration is provided by the entry of lease and PRLA holders from an increasingly wide assortment of businesses. In 1950, only four business activity categories were identified in this survey as holding at least 5 percent of all land under lease. By 1980, nine such categories were identified. Also, while six business categories contributed 5 percent or more of the total production from Federal land in 1972, seven categories provided at least that level of output in fiscal year 1979. In both 1970 and 1980, six business activity categories held at least 5 percent of all acreage under PRLAs.

While the above data suggest that concentration has not occurred, other data show that leaseholding entities typically hold larger blocks of Federal coal land and more Federal coal leases than in earlier years. During the 30-year period when the number of leasing participants nearly doubled, the total number of acres under lease increased 18 fold and the number of leases increased sixfold. On the average, a lessee held 3.38 leases and 4,975 acres under lease in 1980, 10 times more than the 493 acres held, on the average, and three times the 1.04 leases held, on the average, by lessees in 1950. Little change is noted for average number of acres held by PRLA holders. For PRLAs, the average number of acres held was 8,722 in 1970 and 8,591 in 1980.

Diversification

The increased involvement in the Federal coal leasing program by widely different

SOURCE: Reproduced from "An Assessment of Development and Production Potential of Federal Coal Leases," Chapter 13, p. 384-386, Office of Technology Assessment, December 1981.

types of businesses is complemented by a trend toward increased diversification of business interests within the lease and PRLA holding companies. Three patterns within this trend are noteworthy.

First, there is a growing involvement in the leasing program of horizontally integrated companies. The energy companies, natural gas pipeline companies, and smaller oil and gas companies together hold 31 percent of the land under lease. In 1965, the companies in these three categories combined held only 4 percent of Federal coal acreage under lease. These companies also control 38 percent of all land under PRLAs, up from 15 percent in 1970. For these companies, involvement in coal leasing appears to be part of a strategy to branch into several energy resource fields.

Growing involvement of companies for which coal reserves acquisition represents a vertical integration of business activities is a second trend in lease ownership patterns. Steel companies and electric utilities—which together hold 29 percent of all land under lease today—are the two principal examples of leasing by vertically integrated companies. Steel companies have for decades mined significant quantities of coal and have participated in the leasing program since its inception. The growth of utility involvement in Western leasing since 1965 to its position as the largest leaseholding business activity category in 1980 represents a new and significant type of vertical integration among lessees. The Federal coal leasing program has provided an important avenue for utility entry into the coal industry. Utilities provided 11 percent of the Nation's coal output in 1979. They hold 21 percent of all Federal coal land under lease and produced 30 percent of all coal mined on Federal land. Approximately one-fourth of all utility "captive" coal production was mined from leased Federal reserves.

A third trend reflects the growing involvement of large, already diversified companies in coal leasing. These include metals and mining companies that are diversifying their mineral extraction skills to include coal. They also include chemical and high-technology companies for which entry into the coal industry represents a diversification related to, but not integrated with, existing business activities.

The shift in leaseholdings to large, diversified and integrated companies in turn suggests several observations. First, lease development decisions are increasingly shaped by priorities that reflect business opportunities and capital availability unrelated to coal development. Secondly, these ownership changes can cause a relocation of final decisionmaking authority affecting coal development from local managers to those sometimes working hundreds or thousands of miles from lease sites. Thirdly, the internal business arrangements established by large companies to manage coal leases result in complex decisionmaking processes. While all three of these trends might contribute to increased efficiency in the coal industry, they make understanding coal industry priorities an increasingly difficult task.

Another result of ownership changes is the appearance of more lessees with the financial resources available for coal development that far exceed the resources available to the earlier, smaller coal leasing companies. Increasing participation by larger and more complex corporate entities is not surprising considering the large capital requirements posed by today's coal development.

Next, the increasing tendencies of the large, diversified companies holding leases to establish multicorporate development projects could raise competition concerns not posed when leasing was dominated by many small independent companies. Multicorporate lease development ventures provide a means for corporations to distribute the risks involved in undertaking large-scale coal development projects. They also increase the capital generating capacity of the project as a whole. At the same time, they increase the level of intercorporate information exchange and communication. Finally, joint venturing through subsidiaries far removed structurally from the parent organization has recently provided indirect entry into coal leaseholding by railroads.* (Railroads are prohibited by the Mineral Leasing Act of 1920 from direct lease ownership.**)

Leasing Policies

Several recent studies have pointed to the potential importance of Federal coal leasing policies as a determining factor in the organization and development of the coal industry over the next several decades. The Harvard Business Study, *Energy Future*, for example, observes that: "competition can be protected by methods short of horizontal divestiture, such as existing antitrust laws, setting limits on the share of reserves any single firm can control, and innovative leasing policies. The last can be especially effective."***

The present study shows that over the past 30 years, ownership patterns on leased public coal land have generally been similar to the pattern of industry restructuring typical for private land. Indeed, some developments on Federal coal leases—such as the growing role of utilities as "captive" coal producers—seem to be leading indicators of the changing character of the American coal industry.

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*See ch. II, sec. 6 M, Other Leaseholders, of the OTA Technical Memorandum for further information. See reference on p. 371.

**A recent Justice Department report recommends striking from Federal law prohibitions against the issuance of Federal coal leases to railroads or their affiliates. (*Competition in the Coal Industry, Report of the U.S. Department of Justice, pursuant to section 8 of the Federal Coal Leasing Amendments Act of 1976 for Fiscal Year 1979*; U.S. Department of Justice Antitrust Division; November 1980.)

***R. Stobaugh and D. Yergin (ed.), *Energy Future: Report of the Energy Project of the Harvard Business School* (New York: Random House, 1979).

The Coal Reserves Picture: Estimated Tonnages Held by Individual Firms

Parent Company	Coal Operating Company	Reserves (Billion Tons)
Burlington Northern		14.700
Continental Oil Co.	Consolidation Coal Co.	13.700
Union Pacific Corp.	Rocky Mountain Energy Co.	10.000
Exxon Corp.	Exxon Coal USA	9.200
Peabody Holding Company; Newmont Mining Co.; Williams Companies; Bechtel Corp.; Fluor Corp.; Equitable Life Assur. Society of U. S.; Boeing Co.	Peabody Coal Co.	8.560
Phillips Petroleum		8.000
El Paso Natural Gas		5.200
North American Coal Corp.	North American Coal Corp.	5.600
AMAX, INC.	AMAX Coal Co.	5.045
Occidental Petroleum Co.	Island Creek Coal Co.	4.430
Mobil Corp.		3.500
Gulf Oil Co.	Pittsburg & Midway Coal Mining Co.	2.600
United States Steel Corp.	United States Steel Corp.	2.400
Atlantic Richfield Co.	Atlantic Richfield Co.	2.200
Sun Oil Co.		2.200
Bethlehem Steel Co.	Bethlehem Mines Corp.	1.800
Standard Oil Co. of Ohio	Old Ben Coal Co.	1.713
Pacific Power & Light Co.	NERCO, Inc.	1.700
Pittston Co.	Clinchfield Coal Div.	1.700
Tenneco		1.700
Texaco Inc.		1.650
American Electric Power Corp.	Central Appalachian Coal Corp.	1.600
Kerr McGee Corp.	Kerr McGee Coal Corp.	1.500
Shell Oil Co.	R & F Coal Co.	1.460
ConPac Minerals Ltd.		1.410
Norfolk & Western Rwy.	Pocahontas Land Corp.	1.400
General Electric Co.	Utah International, Inc.	1.300
Donan Joint Venture		1.224
Hillman Coal & Coke Co.		1.154
Texas Utilities	Texas Utilities	1.150
Westmoreland Resources; Penn-Virginia Corp.; Morrison Knudsen Co.; Kewanee Industries	Westmoreland Resources	1.100
Eastern Gas & Fuel Associates	Eastern Associated Coal Corp.	1.058
Houston Natural Gas Corp.	Zeigler Coal Co.	1.000
Kaiser Steel Corp.	Kaiser Steel Corp.	1.000
Montana Power Co.	Western Energy Co.	1.000
NICOR (Northern Ill. Gas Co.)		1.000
Armco Inc.	Armco Inc.	.934
Westmoreland Coal Co.	Westmoreland Coal Co.	.849
Kentucky River Coal Corp.	Kentucky River Coal Corp.	.800
Ranch Services		.750
Greenwood Stripping Corp.	Greenwood Stripping Corp.	.735
Tennessee Valley Authority		.734

Parent Company	Coal Operating Company	Reserves (Billion Tons)
Cape Breton Development Corp.	Cape Breton Development Corp.	.724
Chevron, Oil		.700
Ashland Oil, Inc.	Ashland Coal, Inc., Arch Mineral Co.	.650
St. Joe Minerals Corp.	A. T. Massey Coal Co., Inc.	.650
General Dynamics Corp.	Freeman United Coal Mining Co.	.600
Montana Dakota Utilities Co.	Knife River Coal Mining Co.	.600
National Steel Corp.	National Mines Corp.	.600
Santa Fe Industries		.600
D. D. Stewart	Kentucky Home Coal Co.	.600
Belco Petroleum		.524
Baukol Noonan Inc.	Baukol Noonan Inc.	.500
Morrison Knudsen Co.		.500
Panhandle Eastern Pipeline Co.	Youghiogheny & Ohio Coal Co.	.500
Perma Resources Corp.	Colorado Coal Mining Co.	.500
Columbia Gas System		.484
Quaker State Oil Refining Corp.	Valley Camp Coal Co.	.475
American Natural Resources	Virginia Iron Coal & Coke Co.	.460
Consolidated Natural Gas Co.		.450
Alabama By Products Corp.	Alabama By Products Corp.	.445
Coastal States Gas Corp.	Coastal States Energy	.430
Pennsylvania Power & Light Co.	Pennsylvania Mines Corp.	.427
Rochester & Pittsburgh Coal Co.	Rochester & Pittsburgh Coal Co.	.415
Tennessee Valley Authority		.412
MAPCO Inc.	Martiki Coal Corp.	.404
Penn Pocahontas Coal Co.	Penn Pocahontas Coal Co.	.400
Southern Electric Generating Co.	Southern Electric Generating Co.	.400
Kentucky King Coal Co., Inc.	Kentucky King Coal Co., Inc.	.395
International Harvester Co.	Wisconsin Steel Div.	.370
Reynolds Metals Co.		.350
Internorth Inc.		.350
Jim Walter Corp.	Jim Walter Corp.	.350
Cities Service Co.		.340
Mintech Corp.		.337
W. R. Grace & Co.; Hanna Mining Co.	Colowyo Coal Co.; Terry Eagle Coal Co.	.335
Mid Continent Resources, Inc.	Mid Continent Resources, Inc.	.300
Republic Steel Corp.	Republic Steel Corp.	.300
Inland Steel Co.	Inland Steel Co.	.288
Southern Railway System		.280
Illinois Central Gulf R. R.	Madison Coal Corp.	.276
Union Carbide Corp.	Union Carbide Corp.	.265
LTV Corp.	Jones & Laughlin Steel Corp.	.264
Allegheny River Mining Co.	Allegheny River Mining Co.	.260
Western Fuels Assn. Inc.		.253
Blue Diamond Coal Co.	Stearns Mining Co.	.250
Duke Power Co.	Eastover Mining Co.	.250
Koppers Co. Inc.	Koppers Co. Inc.	.250
Alco Standard Corp.	Barnes & Tucker Co.	.226

Source: Keystone Coal Industry Manual, 1983.

The Coal Reserves Picture . . . Cont'd

Parent Company	Coal Operating Company	Reserves (Billion Tons)
Merchants Petroleum Co.		.221
Great Northern Nekoosa Co.	Brilliant Coal Co.	.205
Bane Coal Corp.	Bane Coal Corp.	.200
McAlester Fuel Co.		.200
New Mexico & Arizona Land Co.		.200
Palmer Coking Coal Co., Inc.	Palmer Coking Coal Co., Inc.	.200
Public Service Co. of New Mexico; Tucson Gas & Elec. Co.	Western Coal Co.	.200
Ruhr American Coal Corp.	Energy Development Corp.	.200
Solar Fuel Co.	Solar Fuel Co.	.200
Zapata Fuels Inc.	Mears Coal Co.; Triple Elkhorn Coal Corp.; Ridgeway Coal Co.	.191
Black Hills Power & Light Co.	Wyodak Resources Development Corp.	.188
South Texas Elec. Coop.; Brazos Elec. Power Coop.		.180
Northwest Energy Corp.	Northwest Coal Corp.; Western Slope Carbon	.172
Old Home Manor Inc.	Old Home Manor Inc.	.168
Kentucky United Mining Co.	Kentucky United Mining Co.	.161
Red Ash Pocahontas Coal Co.	Red Ash Pocahontas Coal Co.	.153
Southwestern Electric Power Co.		.152
American Industries & Resources	Ohio Coal & Constr. Co.; W. Va. Energy, Inc.; Penn United Energies; Mo. Mng. Co.; Universal Coal & Energy; Interstat Energy	.150
California Portland Cement Co.	Soldier Creek Coal Co.	.150
NewFra Resources Inc.	NewFra Resources Inc.	.150
Gulf Resources & Chemical Corp.	C & K Coal Co.; Vantage Coal Co.; W. P. Stahlman; Cambria Coal Co.; Shannon Coal Co.	.148
Ada Mining Corp.	Moody Coal Co.; Plastics Universal	.143
Neely & Gibson Coal Co.	Neely & Gibson Coal Co.	.140
Ideal Basic Industries	Ideal Coal Co.; IBI Coal Co.; Stansbury Coal Co.	.138
Utah Power & Light Co.		.128
Energy Reserves Group	Coal Search Corp.	.125
Lower Colorado River Author.	Lower Colorado River Author.	.120
Arthur T. Walker Estate Corp.	Allegheny River Mining Co.	.120
R. L. Bacon Corp.	Pyro Mining Co.; Ring Coal Co.; Sunland Mining	.120
Oceana, Inc.		.120
The Drummond Co.	H. E. Drummond	.110
Interstate Lumber Co.		.110
ASARCO, Inc.	Midland Coal Co.	.100
B & H Elkhorn Coal Co. Inc.	B & H Elkhorn Coal Co. Inc.	.100
Bradford Coal Co., Inc.	Bradford Coal Co., Inc.	.100
Carbon Fuel Co.	Carbon Fuel Co.	.100
Cherokee Coal Co.	Cherokee Coal Co.	.100
Coal Ltd.		.100
Adolph Coors Co.	Adolph Coors Co.	.100
Mead Corp.	Mead Coal	.100
Shannon Lead & Mining Co.	Bradford Coal Co. Inc.	.100
Sigman Enterprises	Sigman Enterprises	.100
Public Service Co. of Okla.		.097
Marmon Group Inc.	Fattaroll Coal Co., Inc.; GMAW Coal Co.; Stoll Coal Co., Inc.; Penn Pocahontas Coal Co.	.094
Elba Coals Inc.	Elba Coals Inc.; Call & Ramsey Coal Co.	.093
Allegheny Power Service Corp.	Allegheny Pittsburgh Coal Co.	.090
Titan Mining, Inc.	Titan Mining, Inc.	.090
Wise Development Co., Inc.		.090
Universal Minerals, Inc.		.087
Chesholm Mining & Manufacturing Co.		.086
Southeast Coal Co.	Southeast Coal Co.	.082
Washington Water Power Co.	Washington Irrigation & Devel. Co.	.080
Rapoca Energy Corp.		.080
Bow Valley Industries Ltd.	Bow Valley Coal Resources Inc.	.077

Parent Company	Coal Operating Company	Reserves (Billion Tons)
Joseph Orlandi		.076
The Corley Co.	The Corley Co.	.075
Slab Fork Coal Co.	Slab Fork Coal Co.	.075
Virginia Elec. & Pwr. Co.	Laurel Run Mining Co.	.073
Diamond Shamrock Corp.	Falcon Coal Co. Inc.	.070
Guaranty Gas Coal Co.		.070
Schott & Witcher Partnership	Coal Power Corp.	.070
Solar Fuel Co.	Solar Fuel Co.	.070
National Bulk Carriers Inc.	Royal Coal Co.; United Pocahontas Coal Co.	.067
Apollo Corp./Gysegum Inc.	Golden Rod Coal Co.	.065
Paramount Minerals Corp.	Paramount Mining Corp.	.065
Paramount Elkhorn, Inc.	Paramount Elkhorn, Inc.	.060
Shamrock Coal Co.	Shamrock Coal Co.	.060
South Central Coal Co.	South Central Coal Co.	.060
Union Electric Co.		.060
Carbon Fuel Co.	Carbon Fuel Co.	.056
Beltrami Enterprises Inc.	Beltrami Enterprises Inc. (Anth.)	.051
Buckhannon River Co.		.050
C R N Mining Inc.	C R N Mining Inc.	.050
Coal Creek Mining Co.	Coal Creek Mining Co.	.050
S M Corporation	S M Corporation	.050
General Energy Corp.	Buckhorn Hazard Coal Corp.	.050
Lyncroft Associates	Dexter Carpenter Coal Sales Corp.; D & C Mining Co. Inc.	.050
Portland General Elec. Co.	Beartooth Coal Co.	.050
Public Service Co. of Indiana, Inc.		.050
Lehigh Valley Anthracite Co.	Lehigh Valley Anthracite, Inc.	.048
Sunflower Energy Corp.	Sunflower Energy Corp.	.045
Pinson Coal Co., Inc.	Pinson Coal Co., Inc.	.041
Aurco Coals, Inc.	Kodak Mining Co., Inc.	.040
CDR Enterprises, Inc.	CDR Enterprises, Inc.	.040
Manor Mining & Contracting Corp.		.040
T & C Coal Co. Inc.	Tizen Coal Co.	.039
Duquesne Light Co.	Duquesne Light Co.	.037
Lucas Coal Co.	Mineral Hill Corp.	.037
Burford, Inc.	Burford, Inc.	.036
Jandy Coal Co. Inc.	Jandy Coal Co. Inc.	.035
Mercury Coal & Coke, Inc.		.035
Public Service Co. of Indiana		.035
W. R. Grace Co.	Race Fork Coal Corp.	.034
Missouri, Kansas, Texas R. R.		.032
Reading & Bates Corp.	Belva Coal Co.	.032
Western Minerals Corp.	Western Minerals Corp.	.032
Mt. Victory Coal Co., Inc.	Mt. Victory Coal Co., Inc.	.031
Metco Mining Corp.	Metco Mining Corp.	.031
Adventure Coal Corp.	Adventure Coal Corp.	.030
Cairnes Coal Co., Inc.	Cairnes Coal Co., Inc.	.030
Chicago & North Western Rwy.		.030
Douglas Pocahontas Coal Co.	Douglas Pocahontas Coal Co.	.030
Hepburnia Coal Co.	Hepburnia Coal Co.	.030
Jeddo Highland Coal Co.	Jeddo Highland Coal Co.	.030
Kentucky Virginia Coal Corp.	Kentucky Virginia Coal Corp.	.030
PBS Company		.030
Red Jacket Coal Co., Inc.	Red Jacket Coal Co., Inc.	.030
Tampa Electric Co.	Cal Glo Inc.	.030
Unidyne, Inc.	Bergoo Coal Co.	.030
Canon Coal Co.	Canon Coal Co.	.028
Cardinal Mining Co.	Cardinal Mining Co.	.027
Iowa Public Service Co.	Energy Development Co.	.027
Canada Coal Co., Inc.	Canada Coal Co., Inc.	.025
King Knob Coal Co.	King Knob Coal Co.	.025
New River Co.	New River Co.	.025
South Atlantic Coal Co.	Five Oaks Coal Co.	.025
Pro Land Inc.	River Coal Co.; Indian Head Mining Co.	.023
Coney Branch Coal Co., Inc.	Coney Branch Coal Co., Inc.	.022

The Coal Reserves Picture . . . Cont'd

Parent Company	Coal Operating Company	Reserves (Billion Tons)
[illegible] Coal Co		.022
Boden Mining Corp	Boden Mining Corp	.020
California Portland Cement Co	Sabtler Creek Coal Co	.020
Philip L. Calhoun		.020
Chapparal Coal Corp	Chapparal Coal Corp	.020
Classic Mining Co	Classic Mining Co	.020
Glen Burn Colliery, Inc	Glen Burn Colliery, Inc	.020
Gould Mines Inc	Gould Mines Inc	.020
Kentucky Elkhorn Coals, Inc	Kentucky Elkhorn Coals, Inc	.020
Penn Allegheny Coal Co	Penn Allegheny Coal Co	.020
James Spur Coal Co	James Spur Coal Co	.020
Tarheel Coals, Inc	Tarheel Coals, Inc	.020
Penn West Fuels Inc	Deverspike Bros. Coal Co	.019
Century Coals Ltd	Century Coals Ltd	.018
General Exploration Co	Swisher Coal Co	.018
Lawson Heck Inc		.018
Kasel Robbins Coal Co	Kasel Robbins Coal Co	.017
Solar Sources Inc	Solar Sources Inc	.017
Dixie Mining Co	Dixie Mining Co	.016
Transcontinental Oil Corp	Diamond Coal Co. Inc	.016
Alex Coal Co	Alex Coal Co.; Midway Coal Co	.015
Black Fox Mng. & Devel. Co	Black Fox Mng. & Devel. Co	.015
[illegible] Coal Co	Reliable Coal Corp	.015
Clifton Coal Co	Clifton Coal Co	.015
Golden Glow Coals, Inc	Golden Glow Coals, Inc	.015
Instant Information & Advertising Inc	English Coal Co. Inc	.015
Johnstown Coal & Coke Co	Johnstown Coal & Coke Co	.015
Kentucky Prince Coal Corp	Kentucky Prince Coal Corp	.015
Mary Helen Coal Co., Inc	Mary Helen Coal Co., Inc	.015
Middle States Coal Co. Inc	Middle States Coal Co. Inc	.015
Fevan Corp	Majestic Mining Inc	.015
Chafin Coal Co	Chafin Coal Co	.014
Delta Mining Inc	Delta Mining Inc	.014
Harman Mining Corp	Clintwood Mining Co	.014
Osborne Mining Corp	Osborne Mining Corp	.014
Teno Tex Coal Corp	Teno Tex Coal Corp	.014
Moshannon Falls Mining Co	Moshannon Falls Mining Co	.013
Dominion Companies	Hesaville Enterprises	.012
Durango Coal & Leasing Co., Inc	Durango Coal & Leasing Co., Inc	.012
Leechburg Mining Co	Leechburg Mining Co	.012
R. G. Mining Co	R. G. Mining Co	.012
Starford Coal Corp	Starford Coal Corp	.012
Henry Clay Mining Co., Inc	Henry Clay Mining Co., Inc	.011
Arcadia Co	Arcadia Co	.010
West Freedom Mining Co	West Freedom Mining Co	.011
Canonsea Commodity Corp	Companez Coal Corp	.010
Cedarbrook Coal Co., Inc	Cedarbrook Coal Co., Inc	.010
Cumberland River Coal Corp	Cumberland River Coal Corp	.010
Dunavant Enterprises, Inc	Dunavant Coal Co	.010
Hanaay Coal & Land Co		.010
Great Basins Petroleum Co		.010
Green Brook Coal Co., Inc	Green Brook Coal Co., Inc	.010
Guyan Eagle Mining Co., Inc	Guyan Eagle Mining Co., Inc	.010
LaRosa Fuel Co., Inc	LaRosa Fuel Co., Inc	.010
Louisiana Land & Exploration Co	Louisiana Land & Exploration Co	.010
Lucas Coal Co	Lucas Coal Co	.010
Marquette Co	Southern Energy Resources Co	.010
Mineral Development Co	Penn Mar Coal Co	.010
Missouri Pacific R.R. Co		.010
Peggs Run Coal Co	Peggs Run Coal Co	.010
Potter Coal Co	Potter Run Coal Co	.010
Pennsylvania Power & Light Co	Tunnelton Mining Co	.010
Robertson & Associates (RB) Inc	Robertson & Associates (RB) Inc	.010
T & H Coal Energy, Inc	T & H Coal Energy, Inc	.010
Valley Coal Co	Valley Coal Co	.010

Parent Company	Coal Operating Company	Reserves (Billion Tons)
Westover Coal Corp	Westover Coal Corp	.010
Dane Mining Co	Dane Mining Co	.009
Garbart Construction Co	Garbart Construction Co	.009
Leon's Coal Co	Leon's Coal Co	.009
Multi Land Corp		.009
Peach Creek Processing Co	Peach Creek Processing Co	.009
Broecker, Norris, Roblos Coal Corp	Broecker, Norris, Roblos Coal Corp	.008
Case Coal Co	Case Coal Co	.008
Glen Burn Colliery Inc	Glen Burn Colliery Inc. (Anth.)	.008
Husky Industries	Husky Industries	.008
Behe Coal Corp	Behe Coal Corp	.008
Black Fox Mining & Devel. Corp	Black Fox Mining & Devel. Corp	.008
Dixie Mining Co	Dixie Mining Co	.008
Great Lakes Coal Co	Great Lakes Coal Co	.008
Grove City Construction	Grove City Construction Co	.008
J. J. M. Y. Mining Corp	J. J. M. Y. Mining Corp	.008
Longwall Mining, Inc	Longwall Mining, Inc	.008
Belch Mining Co	Belch Mining Co	.008
Reclamation & Air Survey Inc	Reclamation & Air Survey Inc	.008
Swisteck, Inc		.008
Valley Mining Co., Inc	Valley Mining Co., Inc	.008
Calvert & Marsh Coal Co. Inc	Calvert & Marsh Coal Co. Inc	.007
Hawk Contracting Inc	Hawk Contracting Inc	.007
Kentucky Mountain Coal Co	Kentucky Mountain Coal Co	.007
United International Mining Corp	United International Mining Corp	.007
Ohio River Collieries Co	Ohio River Collieries Co	.006
R. F. M. Coal Co., Inc	R. F. M. Coal Co., Inc	.006
S & D Construction Co	S & D Construction Co	.006
Somerset Coal Co		.006
South Hopkins Coal Co	South Hopkins Coal Co	.006
Carter McCall Enterprises, Inc		.005
Breathitt Coal Sales, Inc	Breathitt Coal Sales, Inc	.005
Central Mining Inc	Central Mining Inc	.005
Cheyenne Sales Co	Cheyenne Sales Co	.005
Energy Producers of America	Energy Producers of America	.005
Hardly Able Coal Co., Inc	Hardly Able Coal Co., Inc	.005
Helca Minerals Corp	Helca Minerals Corp	.005
Howard Enterprises	Howard Enterprises	.005
Jones & Brague Mining Co	Jones & Brague Mining Co	.005
McDowell Enterprises, Inc	Medlin Energy Corp	.005
North Cambria Fuel Co	North Cambria Fuel Co	.005
Potts Creek Coal Co	Potts Creek Coal Co	.005
C. H. Snyder Co	C. H. Snyder Co	.005
Southern Pacific Transportation Co		.005
Thompson Coal & Constr. Inc	Thompson Coal & Constr. Inc	.005
Wyoming Mining Co	Wyoming Mining Co	.005
Ambrosia Coal & Construction Co	Ambrosia Coal & Construction Co	.004
Brenda Faye Coal Sales	Brenda Faye Coal Sales	.004
Crescent Hills Coal Co	Crescent Hills Coal Co	.004
Great National Corp	Great National Corp	.004
Henry B. Coal Co. Inc	Henry B. Coal Co. Inc	.004
Leechburg Mining Co	Leechburg Mining Co	.004
Philip Reese Coal Co. Inc	Philip Reese Coal Co. Inc	.004
S. A. M. Coal Co	S. A. M. Coal Co	.004
Standard Marion Coal Co., Ltd	Standard Marion Coal Co. Ltd	.004
Ralph Venn, Inc	Ralph Venn, Inc	.004
Westbury Resources, Inc	Westbury Development Corp	.004
Bridgeview Coal Co	Bridgeview Coal Co	.003
Bull Creek Coal & Dock Co	Bull Creek Coal & Dock Co	.003
Congleton Bros., Inc	Congleton Bros., Inc	.003
Daset Mining Corp	Daset Mining Corp	.003
Donovan Companies	Alumbaugh Coal Corp	.003
Dunbard Mining Co	Dunbard Mining Co	.003
Farrell Cooper Mining Co	Farrell Cooper Mining Co	.003
Fran Ru Enterprises, Inc	Fran Ru Enterprises Inc	.003
Gulf Energy Corp		.003

APPENDIX D (Con't.)

The Coal Reserves Picture . . . Cont'd

Parent Company	Coal Operating Company	Reserves (Billion Tons)
General Mines, Inc	General Mines, Inc.	.003
Imperial Coal Leasing Co	Imperial Coal Co.	.003
Ingram Coal Co	Ingram Coal Co.	.003
Lechase Coal Co., Inc	Lechase Coal Co. Inc.	.003
Keller Steel Co	Industrial Mining Co.	.003
Mark Mining Inc	Mark Mining, Inc.	.003
Markle Bullion Coal Co	Markle Bullion Coal Co.	.003
Metropolitan International, Inc	Metropolitan International, Inc.	.003
Meshannon Falls Mining Co	Meshannon Falls Mining Co.	.003
Pennsylvania Kentucky Mining Co.	Pennsylvania Kentucky Mining Co.	.003
Perry Rock Coal Co	Perry Rock Coal Co.	.003
Reading & Bates Offshore Oil Co.	Belva Coal Co., Inc.	.003
Royal Darby Coal Co	Royal Darby Coal Co.	.003
Sharon Steel	Carpentertown Coal & Coke Co.	.003
Smith & Sloan Coal Co	Smith & Sloan Coal Co.	.003
Terrace Coal Co	Terrace Coal Co.	.003
Willowbrook Mining Co.	Willowbrook Mining Co.	.003
Anderson & Anderson Contractors Inc.	Anderson & Anderson Contractors Inc.	.002
Apache Coal Co	Apache Coal Co.	.002
Associated Drilling, Inc.	Associated Drilling, Inc.	.002
Boyle Coal Co., Inc	Boyle Coal Co., Inc.	.002
Earl M. Brown	Earl M. Brown	.002
Champion Coal Co. Inc	Champion Coal Co. Inc.	.002
Chase Fabco Co.	Jefferson County Coal Co.	.002
Coal Hill Contracting Co., Inc.	Coal Hill Contracting Co., Inc.	.002
Diplek Coal Mining Co.	Diplek Coal Mining Co.	.002
EFW Mining Co. Inc.	EFW Mining Co. Inc.	.002
Fabricators, Inc	Fabricators, Inc.	.002
Floyd Mining Co. Inc	Floyd Mining Co. Inc.	.002
General Energy Corp	General Energy Corp.	.002
General Minerals Corp	General Minerals Corp.	.002
Gyorgeon Enterprises, Inc.	Gyorgeon Enterprises, Inc.	.002
H. & D. Mining Co	H. & D. Coal Co.	.002
H & T Coal Co	H. & T. Coal Co.	.002
Industrial Mining Co	Industrial Mining Co.	.002
Jader Fuel Co	Jader Fuel Co.	.002
Keller Rose Enterprises, Inc.	Keller Rose Enterprises, Inc.	.002
Laurel Ridge Coal, Inc	Maran Mining & Minerals Co.	.002
Leuilla Coal Co	Leuilla Coal Co.	.002
Monroe Coal Sales, Co.	Monroe Coal Co.	.002
Nallico Co.	Nallico Co.	.002

Parent Company	Coal Operating Company	Reserves (Billion Tons)
Oil Shale Corp.	River Hill Coal Co. Inc.	.002
Pennsylvania Energy Corp.	Pennsylvania Energy Corp.	.002
PIC Company	PIC Company	.002
Pine Tree Corp.	Pine Tree Corp.	.002
Ridgeview Coal Co., Inc.	Ridgeview Coal Co., Inc.	.002
S & D Construction Corp.	S & D Construction Corp.	.002
S & D Trucking Co.	S & D Trucking Co.	.002
Wasson Coal Mining Corp	Wasson Coal Mining Corp.	.002
Zimmos Coal Co	Zimmos Coal Co.	.002
Adobe Oil & Gas Co.	B & D Coal Co.	.001
Alabama Electric Coop., Inc.	Abston Construction Co.	.001
Anthony Mining Co. Inc.	Anthony Mining Co. Inc.	.001
B. H. & H. Inc.	B. H. & H. Inc.	.001
Big Ben Coal Co.	Big Ben Coal Co.	.001
Boonhem Clark Coal Co.	Boonhem Clark Coal Co.	.001
Buckeye Coal Mining Co.	Buckeye Coal Mining Co.	.001
Carbones Fuel Corp.	Carbones Fuel Corp.	.001
Conreal Corp.	Congleton Bros., Inc.	.001
Congleton Bros. Inc.	Congleton Bros., Inc.	.001
E & B Coal Co.	E & B Coal Co.	.001
Empire Coke Co.	Empire Coke Co.	.001
Joseph Gorlin Coal Co.	Joseph Godin Coal Co.	.001
R. F. S. Enterprises Inc.		.001
R T T Industries	R T T [illegible]ities	.001
Kelley Enterprises Inc.	Kelley [illegible]prises Inc.	.001
H. L. Kennedy Co.	H. L. Ke[illegible]dy Co.	.001
Krulock Inc.	Krylock Inc.	.001
Lucinda Coal Co. Inc.	Lucinda Coal Co. Inc.	.001
McKim Coal Co.	McKim Coal Co.	.001
C. A. Ogden Coal Co.	C. A. Ogden Coal Co.	.001
Preston Energy Inc.		.001
Princess Coal Sales Co.		.001
Regal Development Corp.	Regal Development Corp.	.001
Sequatchie Valley Coal Corp.		.001
Schlappa Coal Co.	Schlappa Coal Co.	.001
Trans Air Inc.	Margarita Fuels Inc.	.001
United Coals, Inc.	United Coals, Inc.	.001
West Lebanon Coal, Inc.	West Lebanon Coal, Inc.	.001
Haynes R. Wood Coal Co., Inc.	Haynes R. Wood Co., Inc.	.001

(60 a/9)

APPENDIX E

RECOVERABLE RESERVES OF UNITED STATES HIGH-QUALITY METALLURGICAL COAL BY PRINCIPAL OWNER* - COAL AND STEEL COMPANIES
(Millions of tons)

COAL COMPANIES

	Low Volatile	% of Coal Companies	% of Coal and Steel Companies	Medium Volatile	% of Coal Companies	% of Coal and Steel Companies	High Volatile	% of Coal Companies	% of Coal and Steel Companies	Total	% of Coal Companies	% of Coal and Steel Companies
Island Creek	492	31%	25%	159	16%	11.0%	599	22%	8%	1,250	24%	11%
Westmoreland	217	14	11	35	4	2	387	14	5	639	12	6
Pittston	290.7	19	14	212.6	22	15	878.7	33	12	1,382	26	13
Consolidation	439.3	28	22	391.8	40	28	405.4	15	5	1,236.5	24	11
Eastern Gas & Fuel	124	8	6	179	18	13	416	16	6	719	14	7
Total Coal Companies	1,564.0	100%	78%	977.4	100%	69%	2,686.1	100%	36%	5,226.5	100%	48%

STEEL COMPANIES

	Low Volatile	% of Steel Companies	% of Coal and Steel Companies	Medium Volatile	% of Steel Companies	% of Coal and Steel Companies	High Volatile	% of Steel Companies	% of Coal and Steel Companies	Total	% of Steel Companies	% of Coal and Steel Companies
Bethlehem	43E	10%	2%	35E	8%	3%	357E	8%	5%	435	8%	4%
United States Steel	200E	45	10	200E	45	14	2,600E	56	35	3,000	54	28
National	60E	13	3	48E	11	3	492E	10	7	600	11	6
Wheeling-Pittsburgh	3	1	--	0	0	0	57.6	1	1	60.6	1	1
Armco	50	11	2	0	0	0	476	10	6	526	9	5
Inland	0	0	0	76E	17	6	200	4	3	276	5	3
Jones & Laughlin	57	13	3	0	0	0	127	3	2	184	3	2
Lykes Youngstown	32.1	7	2	34.2	8	2	162.2	4	2	228.5	4	2
Republic	--	--	--	45E	11	3	204E	4	3	249	5	2
McLouth	0	0	0	0	0	0	0	0	0	0	0	0
Total Steel Companies	445.1	100%	22%	438.2	100%	31%	4,675.8	100%	64%	5,559.1	100%	52%

SUMMARY

	Low Volatile	% of Coal and Steel Companies	Medium Volatile	% of Coal and Steel Companies	High Volatile	% of Coal and Steel Companies	Total	% of Coal and Steel Companies
Total Coal Companies	1,564.0	78%	977.4	69%	2,686.1	36%	5,226.5	48%
Total Steel Companies	445.1	22	438.2	31	4,675.8	64	5,559.1	52
Grand Total	2,009.1	100%	1,415.6	100%	7,361.9	100%	10,785.6	100%

*Owned and leased.

Source: Company Reports and Drexel Burnham & Co., Inc. estimates

SOURCE: The Coal Industry, Drexel Burnham and Co., January 1977.

APPENDIX F

PREPARATION OF TABLE 9

The data used in the preparation of Table 9 was extracted from the following sources:

"An Assessment of Development and Production Potential of Federal Coal Leases," Office of Technology Assessment, 1981; Appendix B.

"Patterns and Trends in Federal Coal Lease Leadership 1950-1980," Office of Technology Assessment, March 1981.

Printouts of Federal Coal Leases, Bureau of Land Management, 8/10/82.

Printout of Inventory of Leases, Geological Survey, 12/16/82.

Federal Coal Leases; Marketing, Management and Financial Profiles. Coal Week and Mine Regulations and Productivity Report, McGraw Hill Publications, 1981.

The basic data from the above sources was reconciled, to the extent possible, and the current ownership of the leases determined from these and other sources. All leases issued after August 4, 1976 were eliminated in the preparation of the final table since 10 year diligence clauses were incorporated in these leases. The table presents the status of these leases potentially subject to the Section 3 requirement of a production rate of one percent of the lease reserves, to be initiated by August of 1986.

All leases were placed in one of four categories: (1) leases with production, (2) leases with approved mine plans but no production, (3) leases with pending mine plans, and (4) inactive leases (including those with "active mine works" but no production or mine plans).

The limitations of the data used in the preparation of this table are as follows:

1. The printout of "Inventory of Leases" shows some mines that are now producers but that have no approved mining plans. This may indicate either a deficiency in the information available or that production was initiated before detailed mine plans had to be approved.

2. A relatively large number of leases were included in the "inactive files" but were reported to have "active mine works" on site. For this study those were included in the "inactive leases" unless those leases had an approved or pending mine plan, since the condition of the "mine works" was not given. Conditions could range from mines that could be started almost immediately to ones needing complete replacement of equipment. Leases reporting "active mine works" with no production but with mine plans that were either "approved" or "pending" were placed in either category (2) or (3) depending on the current status of the plan.

3. A number of producing leases, some with large production, are jointly owned by two or more companies. In these cases, the lease is reported under only one of the owners. Since producing leases are not of concern with respect to the "diligence requirements" of Section 3 of the FCLAA this treatment of the data will not affect its further use.

4. The few scattered federal leases in Kentucky, Pennsylvania, Alaska, Washington, and Oregon have not been included in the table. One producing lease in Alabama was included. The exclusion of these leases does not distort the data since most of these were either issued after 1976, are already producing or are too small to be of importance.

5. Every effort was made to identify current ownership correctly but many large diversified companies own leases under the names of subsidiary companies and it is often difficult to identify the parent company. Moreover, leases change ownership with corporate acquisitions and this complicates both the identification of lease ownership and the categorization of the lease ownership by business activity.

Table F-1 is an update (February 1983) of the status of selected leases supplied by the National Coal Association. Acreage of producing leases for these companies is now 51,622 acres instead of 37,073 acres shown in Table 7, and total acreage held by these companies is now 206,460 acres instead of 208,712 acres shown in Table 7. These changes are not large enough to affect the analysis or conclusions of Part 7.

TABLE F-1 UPDATE OF THE STATUS OF SELECTED PRE-AUGUST 4, 1976 COAL LEASES

(as of Febaruy 1983)

	Producing Mine		No Production Approved Mine Plan		Pending Mine Plan		Inactive		Total	
	Number	Acres	Number	Acres	Number	Acres	Number	Acres	Number	Acres
Atlantic Richfield	6	14,594	6	8,142					12	22,736
Gulf Oil	6	6,642					31	36,499	37	43,141
Exxon	2	10,230	1	80	2	2,200 [1]			6	14,423
					1	1,193 [2]				
Occidental	2	5,042					5	10,047	7	15,089
Sun Oil	1	6,650			5	8,268	1	14,840	7	29,668
Coastal	5	5,837	5	7,852			1	160	11	13,849
General Electric	3	7,599	3	4,523	2	2,084	23	20,654	31	34,860
Dupont	1	160			1	170	34	47329	36	48,209
Peabody Coal	6	10,487	2	840	1	3,911	20	30,887	29	46,125
Mobil			2	4,000					2	4,000
Chevron							1	625	1	625

[1] Exxon acquired two federal leases in January 1983 by virtue of a lease exchange with BLM. Mine plans are being prepared internally but are not yet on file with the MMS.

[2] Mine plan prepared internally. An additional right-of-way will be required before approval can be obtained.

Source: Company data supplied to National Coal Association.

APPENDIX G

ANALYSIS OF FEDERAL LEASE SALES

1. Coal lease sales

Table G-1 lists all of coal lease sales that have been conducted since the moratorium was lifted in January of 1981. Several lease sales[40] held during the moratorium are not listed since they were required to meet criteria that would not be typical of future sales.

There were 13 major coal lease sales between January 1981 and October 1982, in addition to a number of special sales--one an intertract sale, several production maintenance sales (by application) and four sales of other leases by application. The thirteen coal lease sales in the Table include some leases set aside for small business bidders and two tracts for bidding by public authorities only.

The "small business" set aside sales received bids from small mining companies and individuals; none of which, as would be expected, are holders of pre 1976 leases. One of the five "by-pass" bids was from a pre 1976 leaseholder who has some leases not in production (Peter Kiewit) and one from a pre 1976 leaseholder with a producing lease (Republic Steel). By-pass leases are usually useful only to a specific leaseholder and the disqualification from bidding of Section 3 of the FCLAA of 1976 on them could impose economic hardships on the leaseholders requiring the additional acreage. Moreover, it would result in the inefficient utilization of federal resources since the by-passed lease would often be too small alone for economic development, and a loss in federal revenue from the by-passed unused lease would result.

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[40] Sales were held each year from 1973 to 1978. In most sales only one bid was received.

Because of the conditions surrounding these special sales only the regional sales included in categories G, H, and I in Table G-1 will be used in the analysis that follows. Forty-five leases are included in these three categories, with one lease (Rocky Butte, Wyoming) being offered a second time after the first bid on the lease was rejected. Of these forty-five leases, no bids were received on eleven and one bid on each of fifteen tracts. Thus nearly 60 percent of the sales were without competition.

Of the forty-five leases offered minimal competition occurred in two sales:

> 1 Colorado sale (1/13/81)--6 bidders on 2 leases and 1 Wyoming sale (1/14/81)--5 bidders on 2 leases. Satisfactory competition occurred in two other sales: 1 in Utah (7/30/81)--19 bidders on 4 leases and 1 in Colorado (4/6/82)--8 bidders on 2 leases.

The weakness in the competition for coal leases is due in part to the perception by potential bidders that western coal productive capacity will be more than adequate for some time. As reported by **Coal Age**[41] after the April 1982 sale, the largest coal lease offering in terms of acreage and tonnage ever offered, the Bureau of Land Management stated "We hoped for more competition. . . . We're looking at pretty hard times for [coal operators]"

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[41] **Coal Age**, June 1982, p. 13.

Those bidders that will be disqualified by Section 3 provisions after August 1986 were successful in obtaining 20 out of the 32 leases on which bids were received (in categories G, H, and I) and made at least 16 other unsuccessful bids in other sales. This recent leasing experience demonstrates clearly that, at least under present conditions, competition for coal lease sales would be drastically reduced by the Section 3 provisions.

2. On-shore oil and gas lease sales

Federal on-shore oil and gas leases are offered in three ways: by lottery (for lands previously leased), by direct lease (for lands not previously leased in areas outside of known geologic oil and gas occurrences) and by competitive bidding (land in known geologic oil and gas occurrences). The third category are lands offered under the terms and conditions of the Mineral Leasing Act of 1920 and the FCLAA of 1976 would disqualify those companies affected by Section 3 from bidding on oil and gas leases after August 1986.

Since many more on-shore oil and gas leases are offered than leases for other minerals, a sample of competitive oil and gas lease sales made from October 14, 1981 to September 30, 1982, was analyzed. All these sales are tabulated in Table G-2, and show for each sale the number of bidders that would be affected by the Section 3 provisions. The number shown is a minimum value since some bidders not identified as such may represent parent companies affected by the Section 3 provisions and for some sales only the winning bidder's name appeared in the file so that some Section 3 bidders names may have been omitted.

For the 35 lease sales examined, at least 48 bidders in 30 sales were representatives of companies who would be disqualified by the Section 3 provisions. The data in Table G-2 also indicate that this category of bidders were mainly involved in the lease sales with the highest bonus bids. Both these measures--major participation in the lease sales and concentrated activity in those with the highest bonus bids--are an indication of the importance of these bidders to the competitive leasing process for on-shore federal oil and gas resources.

3. Other mineral resources

Lease sales for solid minerals have been held only infrequently in the past 15 years. The results of the last three sales are shown in Table G-3. Of the eight high bonus bidders, six were subsidiaries of a parent company that would be affected by Section 3 provisions. While the bonus bids for these other leaseable minerals are comparatively small, it is clear that whatever competition exists would disappear when Section 3 provisions become effective.

In the case of "other mineral resources" the current ownership of those leases now in effect is also a measure of who can be expected to be competitors in future lease sales. The following table shows the composition of current leaseholders for five major mineral resources.

Commodity	States	Total Leases	Section 3 Leaseholders	
			Number	Percent of Total
Copper	Az, Mo	38	19	50
Potash	Ca, NM, Ut	159	63	40
Phosphate	Fl, Id	153	144	94
Sodium	Ca, Wy	84	18	21
Uranium	NM, Wa, Wy	302	244	81
		736	488	

Federal leases on uranium and phosphate are nearly exclusively held by the owners of Section 3 leases, those for copper and potash are highly concentrated in this same ownership as are an important share of sodium leases. Both recent sales and current ownership of these five important federal mineral resources indicate that owners of leases that would be effected by the Section 3 provisions are necessary for future lease sales to maintain effective competition.

4. Oil shale lease sales

The prototype oil shale leasing program was initiated in 1969 and culminated in four leases sales in 1974. The essential information about these sales is shown in Table G-4. The bonus bids for the four leases totaled $449 million.

The members of the consortia making up the winning bids on the four tracts are shown in Table G-4. Of the nine successful bidders all but three are holders of non-producing pre 1976 leases that would be subject to the Section 3 provisions. Moreover, each of the consortia has at lease one member subject to Section 3 provisions so that none of the winning bids would have been accepted if Section 3 were operative[42] when the sale was held.

Table G-4 also lists all the bidders on each of the sales. In the bids for tract C-a, the one with the largest bonus bid, there were seven bids that were made by groups capable of developing the resource. Each of the seven bidders was either a Section 3 leaseholder or was part of a consortium with at least one member who holds a Section 3 lease. Of the eight bids received for the remaining three leases, four of the bids were from companies or consortia affected by Section 3 provisions.

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[42] Without the leaseholder relinquishing his Section 3 leases or bringing them into production.

The oil shale sales of 1974, conducted before Section 3 of the FCLAA was enacted, demonstrates clearly that Section 3 leaseholders had been disqualified from bidding on the oil shale leases, that the competition for the leases would have been extremely weak, or non-existent. Even the size of the bonuses offered by the few eligible losing bidders would almost certainly have been much smaller if they knew that most of those that actually competed in the sale would have been disqualified from participating. Since the tracts were offered serially it is possible to identify a possible bidders leasing strategy. All the serious bidders participated in the first sale (the most favorable lease) with the losers serious about oil shale development bidding in subsequent sales until a tract was obtained. Since all the winning bidders on the four tracts had Section 3 leases the effect of their disqualification could only have drastically reduced the size of all the bonus bids.

Table G-1. Federal Coal Lease Sales, 1981-1982

Type of Sale	Date	State	Acreage	Reserves Millions of Tons	Number of Bidders	Winning Bidder
A. Small Business (Application and Regional Sale)						
	1/13/81	Colo.	440	1.8	2	Mt. Harris
	6/25/81	Ala.	39	.049	3	Apex Mining Company
	6/25/81	Ala.	80	.069	1	J. J. Israel
	7/30/81	Utah	161	.84	2	Bishopgate Coal
	4/28/82	Mont.	1032	60	2	Wesco Resources
	9/15/82	Ala.	562	0.2	1	Jerry Williams (Apex)
B. By Pass (Application or Regional Sale)						
	4/22/81	Mont.	440	21.8	-	Decker Coal Company
	6/25/81	Ala.	202	.466	2	Apex Mining
	6/25/81	Ala.	1198	5.9	1	Republic Steel/Gulf Oil
	6/25/81	Ala.	41	.388	2	Jennings Coal Company
	10/28/81	Wyo.	360	27.8	1	Big Horn Coal Company
C. Public Body						
	12/16/81	Ala.	198	.06	1	Alabama Electric Coop
	9/15/82	Ala.	399	.05	0	-
D. Intertract Sale						
	4/28/82	Mont.	2096	178	1	Thermal Energy
E. Lease By Application						
	9/25/81	Ky.	1965	4.6	1	Ryan's Creek Coal Co.
	11/10/81	Tex.	6445	95.6	1J	Lower Colo River Auth.
	12/3/81	Okl.	200	.05	1	Lone Star Steel
	2/23/82	Okl.	80	.13	1	Dahlgren Contracting
F. Production Maintenance (Application)						
	5/12/81	Colo.	140	0.5	0	-
	8/11/81	Colo.	180	.835	1	National King Coal
	9/10/81	Utah	1158	13.8	1	Coastal States Energy
	9/24/81	Colo.	376	1.2	1	Wyoming Fuel Company
G. Regional Sale - Production Maintenance						
	1/13/81	Colo.	682	20	2	Empire Energy
	1/13/81	Colo.	876	34.2	4	Consolidation Coal
	1/14/81	Wyo.	4443	13.2	2	Medicine Bow Coal
	1/14/81	Wyo.	1832	7.8	3	Capitol Development
	4/30/81	Colo.	274	0.7	1	Energy Fuel Co.

Table G-1. Federal Coal Lease Sales, 1981-1982 (Continued)

Type of Sale	Date	State	Acreage	Reserves Millions of Tons	Number of Bidders	Winning Bidder
	2/25/82	Utah	160	2.27	1	Consolidation Corp.
	4/28/82	Wyo.	530	90	1	Amax
	4/28/82	Mont.	1430	66	0	-
	4/28/82	Mont.	1632	58.5	1	Western Energy
	4/28/82	Mont.	893	18.9	1	Western Energy
	4/28/82	Mont.	2250	43.2	1	Western Energy
	4/28/82	Mont.	40	5	2	Montana Royalty
H. Regional Sale						
	4/28/82	Wyo.	3687	323	1	Shell
	4/28/82	Wyo.	4855	445	1	Texas Energy, NW Mutual Life (Rejected)
	4/28/82	Wyo.	1153	143	1	Amax
	4/28/82	Wyo.	3237	170	2	Neil Butte Company
I. Regional Sale						
	1/14/81	Wyo.	3010	10.9	4	Arkland Company
	4/30/81	Colo.	5571	63.6	4	Hayden Gulch Coal Co.
	6/25/81	Ala.	3480	30.9	1	U.S. Steel
	7/30/81	Utah	3347	23.12	7	Utah Power & Light
	7/30/81	Utah	4284	26	5	Kanawha & Hocking
	7/30/81	Utah	1999	17.3	4	Kanawha & Hocking
	7/30/81	Utah	1063	12.4	3	Utah Power & Light
	10/28/81	Wyo.	5974	62.7	2	China Butte Coal Co.
	12/16/81	Ala.	1972	5.15	2	Jerry Williams
	12/16/81	Ala.	638	1.17	1	Abston Construction
	12/16/81	Ala.	821	.92	2	Arkland Coal Co.
	12/16/81	Ala.	1940	7.7	0	-
	12/16/81	Ala.	6957	21.1	0	-
	2/25/82	Utah	2000	21.8	0	-
	2/25/82	Utah	749	5.36	0	-
	2/25/82	Utah	2968	38.5	0	-
	4/6/82	Colo.	2368	63.7	4	Utah International
	4/6/82	Colo.	1875	49	4	Consolidation Coal Co.
	4/28/82	Mont.	658	35	0	-
	5/27/82	Utah	11000	112.1	2	West Appa Coal Co.
	5/27/82	Utah	640	7.5	0	-
	9/15/82	Ala.	480	0.3	1	Arkland
	9/15/82	Ala.	478	0.6	2	Jerry Williams (Apex)
	9/15/82	Ala.	1940	8.6	0	-
	9/15/82	Ala.	401	0.8	0	-
	9/15/82	Ala.	6674	22.9	0	-
	10/15/82	Wyo.			1	Wyodak
	10/15/82	Wyo.			1	Texas Energy Services/ Mutual Life

Table G-2. On-Shore Oil and Gas Leases
(October 1981 to September 1982)

Date	State	Bonus Thousands $	Number of Section 3 Bidders
10/14/81	Mt, ND, SD	$ 273	2
10/28/81	Oklahoma	2,229	4
11/18/81	Wyoming	2,508	2
12/8/81	Ala, Miss	41	0
12/22/81	NM, Ok, Tx	3,844	4
1/12/82	Montana	6,155	3
1/13/82	Mt, SD, ND	537	1
1/28/82	Ark, La	395	1
2/17/82	Wyoming	870	0
2/23/82	NM, Ok	506	2
2/26/82	Oklahoma	111	0
3/10/82	Kentucky	4	0
3/11/82	Missouri	43	0
3/17-18/82	Oklahoma	3,081	2
3/25/82	Montana	393	1
4/29/82	Utah	2,769	1
4/27/82	NM, Ok, Tx	4,121	4
5/4/82	New Mexico	179	1
5/4/82	Oklahoma	153	0*
5/12/82	Oklahoma	3,513	0*
5/27/82	North Dakota	22	0
6/2/82	Mt, ND	869	3
6/16/82	Oklahoma	131	0
6/17/82	Oklahoma	327	0
7/8/82	Montana	1,245	3
7/22/82	Utah	5,275	1
7/13/82	Oklahoma	104	0
8/18/82	Wyoming	6,682	6
8/25/82	NM, Ok	3,501	4
8/25-26/82	Oklahoma	3,135	2
9/1/82	Alaska	4,519	0
9/8/82	Oklahoma	1,390	1
9/7/82	Montana	102	0
9/25/82	Oklahoma	38	0
9/20/82	La, Mich	28	0*

*Only the names of successful bidders appear on file.

Table G-3

Solid Mineral Lease Sales

Date of Sale	Tract & Mineral	Location	Winning Bidder	High Bonus Bid	Acreage
1/22/80	NM-40071 Potash	Carlsbad, New Mexico	National Potash Corporation	$351,000	2080
2/9/82	ES-26310 Phosphate	Hamilton Co. Florida	Occidental Chemical Co.	$1203	40
	ES-24596 Phosphate	Polk Co. Florida	Mobile Chemical Co.	$9765	362
	ES-24597 Phosphate	Polk Co. Florida	Mobile Chemical Co.	$14046	520
	ES-24598 Phosphate	Polk Co. Florida	Mobile Chemical Co.	$ 7548	280
	ES-24599 Phosphate	Polk Co. Florida	Mobile Chemical Co.	$ 7600	281
7/8/82	I-8289 Phosphate	North Dry Ridge, Idaho	Conda Partnership	$246,400	640
12/9/82	ES-31345 Phosphate	Polk Co. Florida	W.R. Grace	$11,200	80

Table G-4

Oil Shale Leasing Activity

Date of Sale	Tract	Location	Winning Bidder	High Bonus Bid	Acreage
1/8/74	C-a	Colorado	Rio Blanco Oil Shale Project(1)	$210,305,600	5090
2/12/74	C-b	Colorado	C-b Shale Oil Project(2)	$117,788,000	5094
3/12/74	U-a	Utah	White River Shale Oil Development(3)	$ 75,596,800	5120
4/9/74	U-b	Utah	White River Shale Oil Corporation(4)	$ 45,107,200	5120

Bidders for Tract C-a - January 8, 1974:

*1. Standard Oil Company (Indiana) & Gulf Oil Corporation
2. Sun Oil Company
3. American Petrofina Co. of Texas, Marathon Oil Co. & Phelps Dodge Corp.
4. Atlantic Richfield Co., Ashland Oil, Inc. & The Oil Shale Corp.
5. Shell Oil Company
6. The Carter Oil Co.
7. Occidental Oil Shale, Inc.
8 Lawrence S. Shaw of San Diego, California

Bidders for Tract C-b - February 12, 1974

*1. ARCO, Ashland, TOSCO & Shell Oil Company
2. Geokinetics Group, comprised of Anadarko Production Co., Koch Industries, Inc., Mesa Petroleum Co., Murphy Oil Corporation & Signal Oil & Gas Co.
3. Global Oil Shale Products, Inc. of Redlands, California

Bidders for Tract U-a - March 12, 1974

*1. Phillips Petroleum and Sun Oil
2. Occidental Oil Shale, Inc.
3. Geokinetics Inc.

Bidders for Tract U-b - April 9, 1974

*1. Sun Oil, Phillips Petroleum, Standard of Ohio
2. Geokinetics Inc.

*Winning Bidders

APPENDIX H

EXCERPTS FROM PUBLICATIONS ON THE PROCESS AND TIME FOR DEVELOPING A WESTERN COAL MINE

Excerpts from:

Supplemental Testimony, James R. Jones, Peabody Coal Company on HR 5895, "To Amend the Minerals Leasing Act of 1920: Hearings before the Subcommittee on Mines and Mining of the House Interior and Insular Affairs Committee,

June 10, 1982

Figure B-1

ILLUSTRATIVE WESTERN SURFACE MINE DEVELOPMENT SCHEDULE

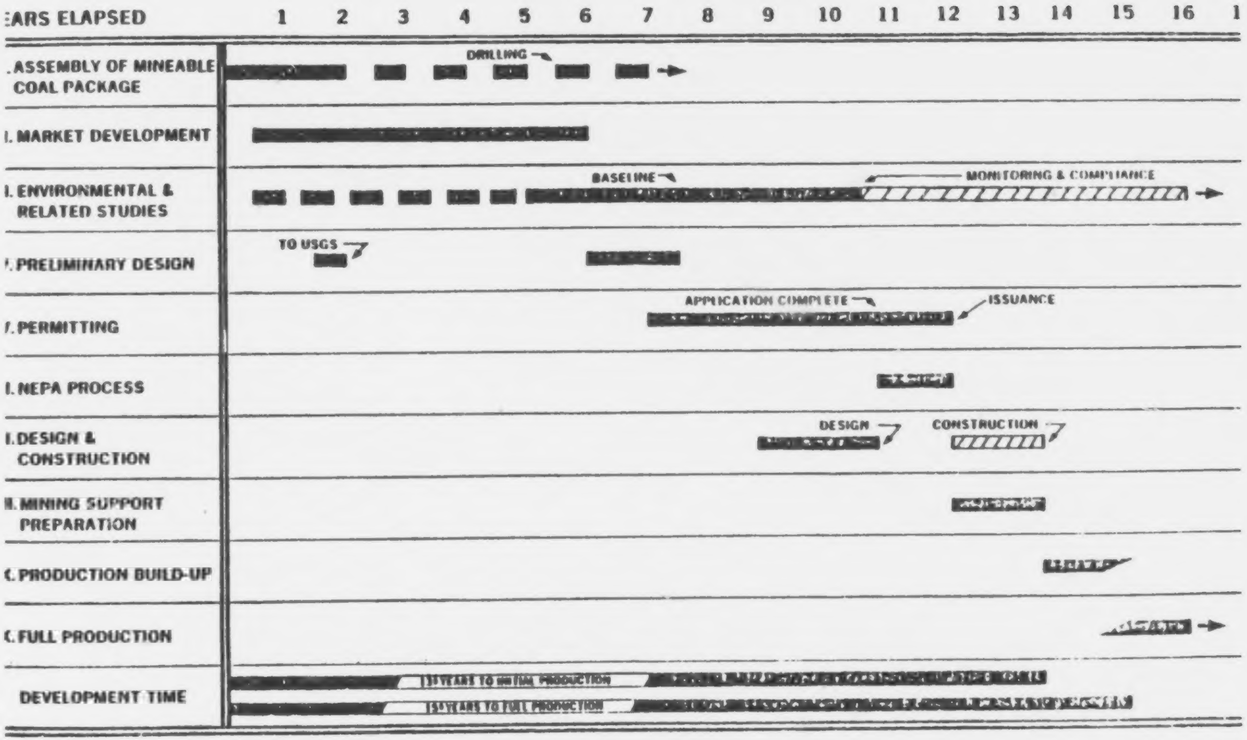

Table II-1

FEDERAL PERMITS OR APPROVALS FOR WESTERN COAL MINES

	Type Permit/Approval	Issuing Authority
1.	Mining and Reclamation (SMCRA) Permit	Department of Interior - Office of Surface Mining
2.	Special Use Permit for Access Road	Department of Agriculture - Forest Service
3.	Special Use Permit for Overstripping	Department of Agriculture - Forest Service
4.	Special Use Permit for Railroad Spur	Department of Agriculture - Forest Service
5.	Prevention of Significant Deterioration (PSD) Permit - Air Quality to Construct and Operate	Environmental Protection Agency (EPA) - Region VIII
6.	Exploration	Department of Interior - Geological Survey
7.	Wildlife Permit	Department of Interior - Fish and Wildlife Service
8.	Explosives	Treasury Department - Bureau of Alcohol, Tobacco, and Firearms
9.	Radio License	Federal Communications Commission
10.	Mine Safety Health Administration Permit (MSHA)	Department of Labor - Mine Safety and Health Administration

NOTE: The number of federal permits/approvals can increase under site-specific conditions not encountered in this illustrative example.

Table II-2

STATE PERMITS OR APPROVALS FOR WESTERN COAL MINES

	Type Permit/Approval	Issuing Authority
1.	Industrial Siting Permit	Industrial Siting Council
2.	Permit to Mine	Department of Environmental Quality - Land Quality Division
3.	State License to Mine	Department of Environmental Quality - Land Quality Division
4.	Air Quality Permit to Construct	Department of Environmental Quality - Air Quality Division
5.	Approval of Change of Use and Point of Diversion - Inundated Rights	Office of State Engineer
6.	Review of Water Supply and Water Yield Analysis	Office of State Engineer
7.	Permit to Appropriate Groundwater - Plant Site Well	Office of State Engineer
8.	Permit to Appropriate Groundwater - Pit Dewatering	Office of State Engineer
9.	Permit to Discharge Water and Operate (NPDES)	Department of Environmental Quality - Water Quality Division
10.	Permit to Construct Sewage Treatment Facility	Department of Environmental Quality - Water Quality Division
11.	Permit to Construct - Waste Water No. 1 Reservoir	Department of Environmental Quality - Water Quality Division
12.	Permit to Construct - 1A Reservoir, 1B Reservoir, Railroad Loop Reservoir	Department of Environmental Quality - Water Quality Division
13.	Reservoir Permit - Shop Reservoir	Office of State Engineer
14.	Reservoir Permit - Waste Water No. 1 Reservoir	Office of State Engineer

Table II-2 (Continued)
Page two

	Type Permit/Approval	Issuing Authority
15.	Reservoir Permit - IA Reservoir, IB Reservoir, Railroad Loop Reservoir	Office of State Engineer
16.	Air Quality Permit to Operate	Department of Environmental Quality - Air Quality Division
17.	Approval to Construct a Solid Waste Disposal Site	Department of Environmental Quality - Solid Waste Division
18.	Approval to Operate a Solid Waste Disposal Site	Department of Environmental Quality - Solid Waste Division
19.	Approval of Mining and Reclamation Plan for State Coal Leases	Department of Environmental Quality - Land Quality Division
20.	Scoria Permit	1) Department of Environmental Quality - Land Quality Division 2) Commissioner of Public Lands
21.	Approval to Operate Waste Water No. 1 Reservoir	Department of Environmental Quality - Water Quality Division
22.	Approval to Operate Sewage Treatment Facility	Department of Environmental Quality - Water Quality Division
23.	Sale and Use Tax Permit	Department of Revenue and Taxation
24.	Approval of Spill Prevention Control and Countermeasure Plan	Department of Environmental Quality - Water Quality Division
25.	Notification of Intent to Open a Coal Mine	State Mine Inspector
26.	Informal Approval of Diversion - Creek Diversions	1) Department of Environmental Quality - Water Quality Division 2) Office of State Engineer

NOTE: Each state has its own procedures which could alter the above list of permits or approvals and the name of the agency issuing same, requiring additional or fewer permits/approvals.

Table II-3

COUNTY PERMITS OR APPROVALS FOR WESTERN COAL MINES

Type Permit/Approval	Issuing Authority
1. Fertilizer and Pest Control	County Commissioner

NOTE: Usually additional county permits/approvals are required for such things as zoning, road crossings, road relocation, sewage and trash disposal, and building codes.

Excerpts from:

"Regulatory and Permitting Requirements for New Western Surface Coal Mines," by E. L. Reed, M. T. Stanton, Society of Mining Engineers of AIME,

February 18-22, 1979

New Orleans, Louisiana

Table H-4. Major Regulatory Agencies for Wyoming Surface Coal Mines

State

- Department of Environmental Quality
  - o Land Quality Division
  - o Air Quality Division
  - o Water Quality Division
- Office of Industrial Siting
- State Engineer's Office
- Mine Inspector's Office
- State Highway Department
- State Archaeologist
- State Historian
- County Commissioners
- Game and Fish Commission

Federal

- Office of Surface Mining
- U.S. Geological Survey
- Bureau of Land Management
- Environmental Protection Agency
- Mine Safety and Health Administration
- Corps of Engineers
- Department of Energy
- Federal Communications Commission
- Bureau of Tobacco, Alcohol and Firearms
- Federal Aviation Administration
- Fish and Wildlife Service
- Forest Service
- Council on Environmental Quality

Table H-5. Required Wyoming Surface Coal Mine Permits

FEDERAL

- o Permit To Mine (OSM)
- o Mining Plan (USGS)
- o Air Quality New Source Construction (EPA)
- o Sedimentation Pond (MSHA & OSM)
- o Water Discharge - 2 NPDES Permits (EPA)
- o Notice of Construction (FAA)
- o Solid Waste Disposal and Spill Prevention (EPA)
- o Surface Mine Identity Number (MSHA)

STATE

- o Permit To Mine (DEQ)
- o License To Mine (DEQ)
- o Air Quality New Source Construction (DEQ)
- o Siting (Siting Council)
- o Sedimentation Pond (State Engineer & DEQ)
- o Water Wells (State Engineer)
- o Water Appropriations - 2 Permits (State Engineer)
- o Plant Facilities Operation (DEQ)
- o Sewage System (DEQ)

Table H-6. The Carter Mining Company
Time Required to Acquire Federal Permits
Prior to Start of Construction for
Wyoming Surface Coal Mines on Federal Leases

	Years
o COMPANY - ALREADY HAS FEDERAL LEASE - DEVELOPS MINE PLAN	3.4
o COMPANY - CONDUCTS PRELIMINARY EXPLORATION - NOMINATES TRACT - OBTAINS COMPETITIVE LEASE - COMPLETES EXPLORATION - DEVELOPS MINE PLAN	11.8

Excerpts from:

"Pacific Gas and Electric's Involvement in Coal," by John C. Osmond, Mining Congress Journal,

May 1979, p. 32

"In 1976 a coal property near Price, Utah was purchased for $10.7 million. . . . It contains 150 million tons of mineable reserves in three seams"

"A mining plan and right-of-way applications to develop mines capable of producing 2 million tons per year were submitted to the U.S. Geological Survey and Bureau of Land Management in November 1976"

"Preliminary draft of EIS was issued in October 1978 with the final statement available this month" (May 1979)

"Preparation of materials to support applications for permits began in 1975. The permits necessary for mining are anticipated in early 1980. . . . Construction of mines and facilities to produce 4 million tons of clean coal are expected to require at least six years and cost nearly half a billion dollars"

"More than three years ago it was decided to build the first large coal-fired power plant in California. After more than three years of work on the project, about two years still remain before approval to start construction may be granted. If construction can be completed in 4 years, the plant will begin operating nearly 10 1/2 years after the project was conceived . . ."

Excerpts of letter from Shell Oil Company to Henry Perry
dated December 10, 1982

Table H-7

BUCKSKIN MINE CHRONICLE

DATE	EVENT
March 1, 1975	Coal Lease No. WY-0325878 conveyed from Farmers Union Central Exchange to Shell Oil Company. Effective date of Coal Lease is November 1, 1967.
May 1, 1975	Coal Lease Assignment to Shell approved by Department of Interior.
May 10, 1977	Mine Permit Application submitted to Wyoming Department of Environmental Quality and U. S. Geological Survey; 4MMTPY.
August 3, 1977	Surface Mining Control and Reclamation Act of 1977 enacted.
December 13, 1977	Office of Surface Mining issued Initial Regulation Program.
March 4, 1978	Wyoming Environmental Quality Act amended.
May 2, 1978	Wyoming Land Quality Division Regulations are amended.
July 27, 1978	Mine Permit Application is revised.
September 1, 1978	Wyoming Land Quality Division Regulations are amended.
September 18, 1978	Office of Surface Mining issued Proposed Rules for Permanent Regulation Program.
October 25, 1978	Department of Interior issued Draft EIS.

BUCKSKIN MINE CHRONICLE
(cont'd.)

DATE	EVENT
November 13, 1978	Mining Permit Application revised according to amended Wyoming Land Quality Division and Office of Surface Mining regulations; 6MMTPY.
March 9, 1979	Mine Permit Application suspended due to potential Alluvial Valley Floor determination.
March 1979	Department of Interior issued Final EIS.
March 13, 1979	Office of Surface Mining issued Final Rules for Permanent Regulation Program.
August 15, 1979	Wyoming State Program submitted to Department of Interior.
August 23, 1979	Mine Permit Application revised to exclude potential Alluvial Valley Floor.
March 11, 1980	Mine Permit Application approved by Wyoming Department of Environmental Quality.
March 25, 1980	Interim Wyoming State Program approved by Department of Interior.
June 15, 1980	Mine Permit Application approved by Department of Interior.
July 1980	Construction of the mine commenced.
November 12, 1980	State Program Mine Permit Application submitted to Wyoming Department of Environmental Quality.
November 26, 1980	Department of Interior approved Wyoming State Program with conditions.

Table H-7 (Cont'd)

BUCKSKIN MINE CHRONICLE
(cont'd.)

DATE	EVENT
March 26, 1981	Wyoming Land Quality Division Regulations are amended.
September 1981	Coal production is initiated.
April 1, 1982	State Program Mine Permit Application approved by Wyoming Department of Environmental Quality.
October 26, 1982	State Program Mine Permit Application approved by Department of Interior.
November 1, 1982	Phase II Mine Permit Application submitted; includes potential Alluvial Valley Floor.
March 1983	Anticipate to have produced approximately 2MM tons of coal (2-1/2% of 79MM ton reserve).

Table H-8

NORTH ROCHELLE MINE CHRONICLE

DATE	EVENT
February 12, 1980	Peabody Coal Company conveyed part of Coal Lease W-0321779 to Shell Oil Company. Effective date of Coal Lease W-0321779 is December 1, 1966.
March 25, 1980	Interim Wyoming State Program approved by Department of Interior.
July 1, 1980	Department of Interior assigned Shell Coal Lease W-71692.
November 26, 1980	Department of Interior approved Wyoming State Program with conditions.
March 26, 1981	Wyoming Land Quality Division Regulations are amended.
July 24, 1981	Submitted Mine Permit Application to Wyoming Department of Environmental Quality and Department of Interior.
March 13, 1982	Scoping hearing for EIS was held by Department of Interior.
June 17, 1982	Wyoming Department of Environmental Quality determined Mine Permit Application was complete.
September 24, 1982	Department of Interior issued Draft EIS.
November 15, 1982	Mine Permit Application was found to be acceptable for public notice (technically adequate) by Wyoming Department of Environmental Quality.
February 1983	Anticipate final EIS will be issued by Department of Interior.
April 1983	Anticipate Mine Permit Application will be approved by Wyoming Department of Environmental Quality and Department of Interior.

Excerpts from:

"Nerco Tops 20-Million - tpy Mark," by Peter Green,
Coal Age, October 1982,
p. 52 and p. 67

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"It takes about $10 million and four years to obtain a permit for a mine that will produce 12 million tpy . . . ."

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"Spring Creek is the first project to be totally designed and constructed by the company since Nerco Inco was established in 1977. The complete project cost $168 million and took four years to complete"

Senator **Warner**. Thank you very much Mr. Perry for your statement.

I don't have any questions. The statement speaks for itself and I appreciate what you said in your detailed report. Thank you very much.

Next is Mr. Richard Neyrey, vice president for planning and development, Mobil Diversified Business, Inc.

STATEMENT OF RICHARD R. NEYREY, VICE PRESIDENT, PLANNING AND DEVELOPMENT, ALTERNATIVE ENERGY, DIVERSIFIED BUSINESSES, MOBIL OIL CORP.

Mr. **Neyrey**. Mr. Chairman, members of the subcommittee, I am Richard Neyrey, vice President of alternative energy planning and development for Mobil Oil. I appreciate the opportunity to present Mobil's views in support of S. 1634.

We have submitted a detailed statement for the record that focuses on the application of section 3 and the Federal Coal Leasing Act and presents among other things the generic arguments supporting repeal of this onerous provision of the law. It reflects our view of section 3 as both unnecessary and counterproductive.

I will not dwell on these more general comments in my summary remarks. Rather I will highlight that portion of the statement dealing with Mobil's experience in Federal coal development which we believe demonstrates the basic unfairness and unreasonableness of section 3.

Let me begin by saying that Mobil shares a mutual desire with the remainder of the coal industry and the Congress to insure the orderly, efficient and effective development of our national coal resources. In meeting this end we recognize the need for statutory and regulatory direction, encouraging the expeditious development of Federal coal leases. We firmly believe, however, that such guidance to be meaningful, it must recognize economic circumstances and be interpreted and administered with sufficient flexibility to meet the realities of the marketplace.

Section 3 does not meet this fundamental test. Let me illustrate by using Mobil's experience as an example.

In 1971 Mobil acquired its only Federal lease, a 4,000 acre tract in Wyoming, expending over 400 million tons of coal as a potential feed stock for synthetic fuels. We obtained the lease with a high competitive bid of $441 per acre which amounts to a total bonus payment of $1,764,000.

This Federal lease in conjunction with intermingled private mineral properties containing about 18 million tons of reserve, comprises the Caballo Rojo Mine. Mobil took into consideration the fact that most statutory, regulatory, or contractual stipulations existed at the time requiring that production commence by a specific deadline or in specific amounts, or that production continue without regard to market conditions or other economic considerations.

Mobil also took note of the lease provisions permitting payment of minimum advance royalties in lieu of production. In entering into the lease Mobil anticipated its rights and obligations would be governed by the terms of that lease. This situation resulted of course in 1976, partly because of the alleged nondiligent regulations, but more critically with the enactment of section 3.

Nevertheless we have continuously engaged since the issuance of the lease in 1971 in developing it into a potential property. Because of the uncertainties concerning the economic viability and timliness of synthetic fuel projects, Mobil decided to develop its Federal lease with the objective of selling the coal at a long term supply contract to public utilities and other substantial purchasers. We continue, however, to consider utilizing this Federal coal as a synthetic fuel in the long term.

That means, and very briefly some statistics that reflect the extent of our commitment to the commercial development of this property. Over 20 permits and authorizations were obtained at the cost in excess of $5 million from various local, State and Federal Government agencies to commence production. Necessary studies for permitting were initiated in 1975 and were modified to accommodate the requirements of the Surface Mining and Reclamation Act of 1977.

The first permit was applied for in April 1979 and the final permit needed to commence operations in February 1981.

Expenses for mitigation of social, cultural and economic impact approach $2.5 million and will continue throughout the life of the mine.

Mobil bid on 17 long-term solicitations from potential buyers. That according to our records represent the total offered to Powder River Basin producers during the 5-year period 1978-82. Nine of these solicitations were ultimately withdrawn by the purchasers. Of the remaining eight, Mobil was selected as the coal supplier on three and remains an active candidate on a fourth.

The three include two finalized contracts to supply Wyoming and Kansas powerplants and a contract which we're currently negotiating to supply a powerplant in Oklahoma. All of these contracts are long term, 20 years or more. They represent over the life of the contracts a commitment of about 93 million tons of coal, about 22 percent of the recoverable reserves contained in Mobil's Federal lease.

Production at the Caballo Rojo Mine commenced in December 1982. We will produce about 1.4 million tons this year to satisfy our contracts. We expect to produce about 2 million tons next year. As permitted, 3.2 million tons of production during the first several years will be from such private reserves contiguous to the Federal coal lease, since this is the most orderly and efficient mining sequence. Stripping of the overburden and the first—on the Federal lease are substantially complete and Federal coal will be produced starting next year.

To date over $100 million has been invested in the development of the lease including expenses for development relating to construction of plant and rail facilities, mining equipment, and other capital expenses. The mine's permanent facilities and equipment are currently capable of supporting an annual production of 8 million tons. Eighty-two workers are employed, which has an annual operating budget of over $6 million.

In light of this extensive and dedicated effort to develop our Federal lease it seems inconceivable that Mobil would be found in violation of section 3. We could be threatened with such a possibility, however, because of the ambiguous yet inflexible nature of the production requirements.

Section 3 requires production in commercial quantities by August 1986. It would seem that we have more than complied with the congressional intent by the construction and operation of the Caballo Rojo Mine, an operation that has required over $100 million to develop, is capable of producing 8 million tons of coal per year, and shall be delivering more than 2 million tons of coal per year before August 1986 to customers under 20-year contracts, must surely be considered commercial by most prudent people. Nevertheless, section 3 could be applied in such a way that Mobil's present efforts could be viewed as insufficient to meet the Department of the Interior's interpretation of commercial quantities until after August 1986.

What limited guidance there is on section 3 is ambiguous. The DOI regulations currently appear to require the production of at least one percent of Federal leases recoverable reserves, or about 4 million tons in Mobil's case.

Under existing guidance such amount must be mined regardless of the opportunity to market it. No other alternatives such as payment of advance royalties is available for us to suspend application of section 3 sanctions should we not produce 4 million tons until after August 1986. Although Mobil has the mining equipment and processing and loading facilities to comply with section 3, its actual production is subject to the fluctuation of the market and to the terms of its existing sales contracts. Those sales contracts—from performance by either buyer or seller or causes by either's control which under good commercial practices are found in long-term supply contracts. Thus, Mobil is faced with the unreasonable prospect, we have aggressively pursued sales opportunities for the past 5 years and have entered long-term supply commitments for nearly 100 million tons of coal. Obviously we are in the coal business to stay and do not intend to relinquish or sell our Federal lease. Even if we did, no one knows that such a sale or related sale would eliminate the section 3 problem anyway. But even if it did Mobil could take no action that would jeopardize fulfillment of its supply commitments, yet we can ill afford to be in noncompliance with section 3 because of the unwarranted and severe impact it would have on our ongoing oil and gas, phosphate, or shale and tar sands program.

This capsulized version of Mobil's experience highlights some of the key problems and difficulties associated with the application and enforcement of section 3. It illustrates particularly the uncertainty and heightened risk imposed on the lessee by the inflexible and severely punitive nature of the statutory provisions.

In our view this risk and uncertainty represents an unreasonable and unnecessary burden on the coal producers. It is imperative that this Nation maximize the production of its energy resources. This development effort must be accomplished in an efficient and responsible manner with regard to the environment. The statutory guidance supporting the effort must be readily understood and flexible enough to allow for reasonable flucutations in market conditions.

Further, associated sanctions for noncompliance should be sensible, related directly to the violation, and applied with minimum adverse impact on overall energy development.

In our view section 3 fails to meet these criteria and should be repealed. Mr. Chairman, that completes my statement. Thank you.

[The prepared statement of Mr. Neyrey follows:]

TESTIMONY OF

RICHARD R. NEYREY
Vice President, Planning and Development
Alternative Energy, Diversified Businesses

MOBIL CORPORATION

Mobil shares a mutual desire and responsibility with the remainder of the coal industry and the Congress to ensure the orderly, efficient and effective development of one of our most abundant energy resources - our national coal reserves. In meeting this end, the necessity for reasonable statutory and regulatory direction concerning the development of federal coal leases is essential. Senator Wallop, the sponsor of S. 1634, is to be commended for his foresight in drafting a bill to correct a major flaw in the Mineral Lands Leasing Act (MLA) which presently poses innumerable problems for developers of federal coal leases.

The following statement details Mobil's reasons for support of S. 1634 which would repeal subparagraph (A) of Section 2(a)(2) of the Mineral Lands Leasing Act of 1920 [30 USC 201(a)(2)], popularly referred to as Section 3 of the Federal Coal Leasing Amendments Act (FCLAA) of 1976. Section 3 states:

> "The Secretary shall not issue a lease or leases under the terms of this Act to any person, association, corporation . . ., where any such entity holds a lease or leases issued by the United States to coal deposits and has held such lease or leases for a period of ten years when such entity is not . . . producing coal from the lease deposits in commercial quantities."

Without repeal of Section 3, legitimate coal producers found not in compliance with Section 3 on August 4, 1986, will be precluded from being issued leases for any mineral issued under the Mineral Lands Leasing Act. The Section 3 provision could jeopardize the goal of energy security - a goal which is vital to this country's economy and security - without serving any national interest.

Mobil Oil Corporation and its subsidiaries are significant oil and gas producers which hold a number of federal onshore oil and gas leases and federal leases for other Mineral Lands Leasing Act minerals, including one federal coal lease. Mobil is also actively involved in the Department of Interior's emerging oil shale and tar sands leasing programs. Since the Mineral Lands Leasing Act governs the leasing of all of these minerals, the Section 3 prohibition could potentially affect Mobil's ability to secure onshore oil and gas, coal, tar sands, oil shale, phosphate and other resources needed for continued energy and minerals production.

The seven years since passage of FCLAA has brought into focus many considerations which support the repeal of Section 3 through S. 1634. First, the apparent perceptions behind enactment of Section 3 were either unfounded or cured by other measures so that Section 3 is unnecessary. Second, Section 3 is counterproductive in view of its adverse economic, anti-competitive, and disruptive impacts on the development of federal energy and mineral resources. Finally, Mobil's own experience will demonstrate the basic unfairness and unreasonableness of Section 3.

SECTION 3 IS UNNECESSARY

Throughout the debates that preceded the enactment of the FCLAA, advocates of the bill frequently recited several perceived ills which the legislation was designed to correct. The passage of time since enactment of FCLAA, however, has shown that these congressional suspicions were either unfounded or cured by other measures.

Speculation

The legislative history of FCLAA indicates that the speculation issue was one of the chief forces behind enactment of the bill. Supporters claimed that the existing law "enabled lessees of coal to acquire large reserves at relatively low prices and hold them for a nominal sum until rising coal prices produce[d] spectacular inventory profits at which time the coal [was] released." 1/ There was a fear that the federal coal leasing policy allowed "lease speculation by large holding companies and excessive nondevelopment." 2/

The House Committee report on FCLAA noted that:

> Of the top 20 coal permit holders, on an acreage basis, only four are actively engaged in production of coal ... Suffice it to say that brokers - not producers or users - are the predominant holders of federal coal prospecting permits. 3/

The report found also that 45% of all federal coal leases at the time had been noncompetitively issued under the preference right lease system, thereby allowing "speculators" to acquire federal coal "at virtually no cost." 4/ Accordingly, the bill was "drafted to specifically eliminate the speculative holding of leases and to ensure that these will be developed on a timely basis . . ." 5/

There is a need, however, for Congress to separate speculative holdings by those with no intent to develop from legitimate reserve acquisition needs. As noted in the 1982 Department of Justice report on "Competition in the Coal Industry", there is a legitimate requirement for western coal producers to position themselves in various coal markets in order to be able to respond to the requirements of individual coal purchasers. Unfortunately, the inventory of serious coal developers is viewed collectively with the reserves held for resale and profit by nondevelopers.

The bulk of federal coal leases will be dedicated to serving electric utilities under long term contracts -- contracts that very likely will extend over a 20 to 30 year period and involve obligations for producing very large amounts of coal. A developer, to be competitive, must be readily able to demonstrate a capability to meet such long term commitments. An adequate reserve base is a critical element in this respect. The long term commitment of coal reserves to individual purchasers is valuable for two reasons. Not only does it provide certainty of supply, including price predictability and quality control to the utility, it also presents substantial economic and operational efficiencies through tailoring boiler design to the specifications of coal from a particular deposit. This is especially important in view of the variety of coal available in the West.

So while Congress had a legitimate goal in eliminating true speculation, the holding of coal reserves is not necessarily undesirable, considering the wide range of uncertainty regarding future demand for western coal, the variety of coals of different qualities for which reserves need to be maintained and the requirement that a reserve base serve for a mine life of 30 years or more.

Both the Department of Justice analysis and present forecasts concentrate on steam coal for power generation, but a comparable justification exists for acquiring coal reserves for synthetic fuels. A captive coal supply with known specifications and mining costs is fundamental to the design of a coal synthetic fuels project. Before FCLAA, some companies acquired federal coal leases often with heat values and coal specifications which were and are not competitive for steam generation. Unlike most reserves held by true speculators, these reserves are not of the quality that render them readily disposable by resale. Instead, they are primarily suitable for synthetic fuel production, but unfortunately the economics to support investment are still years away. Nevertheless, an assured reserve base is still essential so that technical feasibility studies and other pre-development tasks can be progressed bringing closer the realization of this nation's synfuels potential.

While the legislative history makes it clear that a major purpose of Section 3 was to prevent federal coal leases from being held indefinitely for speculation, Section 3 does not necessarily achieve this goal. Leaving aside the legitimate need to have sizable inventories of federal coal in order to tailor proposals for utilities' or a synfuel project's needs, Section 3 does not operate to force either forfeiture of a lease or to effect early production of existing leases. Nor does Section 3 preclude prospective lease speculation.

True speculators - those entities having no interest in producing from a lease - will not necessarily be affected by the Section 3 sanction because they can continue to hold non-producing coal leases beyond August, 1986. Unless the speculator is interested in acquiring future federal mineral leases, Section 3 has no impact. On the other hand, active developers holding federal coal leases could be caught in the Section 3 squeeze by being disqualified from acquiring other Mineral Lands Leasing Act leases needed to support ongoing and new energy development projects.

Excessive Nondevelopment

A second congressional rationale behind Section 3 (but closely related to the speculation issue) focused on the large amount of undeveloped federal coal then under lease and the need to promote development. The legislative history for FCLAA repeatedly points out that only 59 of the then existing 533 federal leases were actually producing coal. "Although all but 19 of the existing leases are more than five years old, some are more than 40 years old and many were entered over 20 years ago." 6/ In 1974, federal coal leases produced 20.6 million tons, accounting for only slightly more than 3% of the national total. The House Committee report concluded that given the 16 billion tons of reserves under lease, "it would seem that their contribution to the nation's energy supply should be far greater than 3 percent of the total if leaseholders are developing this valuable resource at the most effective and efficient rate possible."

Federal coal production has been on the rise in the last several years as a result of market forces rather than as a result of Section 3 which creates no demand. Federal coal production grew to 104.43 million tons in Fiscal Year 1982. 7/ In 1981, federal production accounted for 14.2% of the national coal production total and 55.8% of the production in the six producing western states. 8/ This is a good record especially considering the myriad of development hurdles which must be cleared before production can even commence. But, the bottom line is that production capabilities must always be tailored to demand. Without a market, coal cannot be produced.

Looking at the Powder River Basin, which accounted for well over half the federal coal production in 1982, it must be remembered that years were necessary to obtain rights to minable tracts and then to permit and construct the mines. The huge capital investment to build one of the new Powder River Basin mines could not be made until a sufficient market was identified. The development of the Powder River Basin mines started before the enactment of the FCLAA and has continued without any known influence by Section 3. The increased production is in response to market demand.

Of the federal production for 1982, 52 million tons were produced in the Power River Basin, an increase of 6.7 million tons over 1974. 9/ This increase resulted from market demand for such coal. At least 9 mines had permit applications pending in 1976, and at least another 15 mines, like Mobil, were already conducting the studies and surveys necessary to apply for such permits. 10/ These plans were in motion because of the market demand for Powder River Basin coal.

Oil Company Ownership of Federal Coal

In the aftermath of the oil embargo, there was substantial distrust of the oil companies' acquisitions of federal coal with some in Congress voicing the concern that "the big oil companies [had] been moving into coal in a very heavy way." 11/ Since, at that time, seven oil companies owned 26 billion tons of the nation's estimated coal reserves, some congressmen asked whether it was "possible that these companies could be in a position to limit interfuel competition by withholding coal supplies by nondevelopment of the reserves?" 12/ Some critics went so far as to argue that oil companies had actually withheld coal production, that is, failed to develop their existing properties in an attempt to protect the value of the oil reserves.

This fear, however, is unwarranted. Oil companies have a good track record for producing their coal reserves. In October 1982, API published a report ("Market Shares and Individual Company Data for U.S. Energy Markets: 1950-1981") which shows that companies with oil operations accounted for 21.6% of the total U.S. coal production in 1981 while holding only 18.7% of the coal reserves.

It should be noted that Section 3's chilling effect on multi-mineral developers is not restricted solely to major oil companies. Any coal lessee which has developed interests in more than one mineral is affected. As shown in the 97th Congress Office of Technology Assessment report on "The Development and Production Potential of Federal Coal Leases", there is no real evidence of concentration of leaseholdings. Thus, Section 3 will not only affect large energy companies, but also natural gas pipeline companies, small oil and gas companies, coal companies, steel companies, electric utilities, metals companies and other diversified companies whose main business is not related to coal development.

Other Provisions of the Mineral Leasing Act

Assuming that speculation and the lack of development were legitimate concerns in 1976, other provisions of the Mineral Lands Leasing Act address these issues more directly and appropriately than Section 3. As mentioned earlier, the FCLAA provisions requiring competitive bidding and receipt of fair market value assist in curbing speculation. The diligent development requirements of Section 7 (immediately applicable to post-FCLAA leases and made applicable by DOI to pre-1976 leases upon lease readjustment) promote expeditious development and preclude adverse speculation by requiring termination of coal leases not producing in commercial quantities on a date certain. These legislative constraints, while in many ways overly restrictive and inflexible themselves, 13/ impose a sanction related directly and appropriately to the lease in question and not to leases for other mineral resources. Further, they have the benefit of being prospective 14/ so that post-FCLAA entrants into the federal coal leasing program know the ground rules prior to bidding and entering a lease. Consequently, bidders for federal leases now must determine beforehand whether they have the financial resources and potential markets 15/ to assume and manage the risks involved in negotiating sales contracts, obtaining permits, constructing facilities and achieving production in commercial quantities all within the statutorily-mandated ten years of Section 7.

SECTION 3 IS COUNTERPRODUCTIVE

Instead of solving perceived problems, Section 3 has created other very real problems which are disruptive and counterproductive. Section 3, in fact, conflicts with several fundamental economic principles and undermines the goal of energy security. This statutory provision has introduced variables into the federal coal development process that have already created considerable uncertainty within the energy industry, and promises to be even more troublesome as the August 1986, deadline approaches. The resulting uncertainty could seriously disrupt the efficient leasing and development of many of the minerals leased under MLA in the years to come.

Anti-Competitive Impact on Mineral Development

Section 3 unfairly singles out coal lessees, particularly coal lessees involved in other federal mineral development, *e.g.*, oil and gas and synthetic fuels resources. Section 3 is the only mechanism under federal mineral laws where an event with respect to one type of mineral impacts other minerals. With so many mineral producers interested in developing more than one type of mineral, this Section 3 linkage will adversely impact competition and development of other minerals as well as coal. The Section 3 sanction, therefore, not only fails to address the perceived ills of speculation and nondevelopment, but it forces economic dysfunctions such as reduced competition.

Senator Wallop in his introductory statement pointed out that according to a 1981 Office of Technology Assessment report some two-thirds of the pre-FCLAA federal coal lessees face an uncertain future in light of the 1986 Section 3 deadline. Of these lessees, 72 are publicly-owned companies and 49 are actively involved in oil and gas development. Elimination of these firms from future oil and gas sales, oil shale leasing, tar sands, etc., is not in the best economic interests of the country or in the best interests of our national welfare and security.

Eliminating potential bidders for violation of Section 3 strikes hard against the interests of the federal government in its efforts to obtain fair market value on future Mineral Lands Leasing Act leases. There is often only a handful of bidders on any given lease tract. If just a few key firms are barred from participating, the level of bonus bids could fall significantly and thereby adversely affect government receipts. It is not in the public interest to retain a statutory provision which could so drastically undermine the ability to obtain fair market value for mineral leases. Likewise, since the affected western states receive 50% of federal bonuses, rentals and royalties on federal coal leases, income to such states will be reduced.

More than the federal and state treasuries will be adversely impacted by Section 3's artificial elimination of competitors from access to federal minerals. Certainly limiting the number of competitors collides with the fundamental assumption that maximum competition in all markets is in the national interest.

Traditional benefits of unrestricted competition certainly will be lost in the future development of new coal leases because the federal government controls so much of western coal. Since there is little private western coal not at least dependent on future leasing of adjacent federal resources, eliminating holders of federal coal leases will eliminate major competitors from a significant geographical area. Many companies otherwise highly capable of developing will be excluded. Fewer tracts may actually be awarded providing less of a choice for consumers, including those outside the western coal producing states, either dependent on or desiring western coal.

The public interest is not served by limiting competitors for synthetic fuels development from federal lands. For example, tar sands and oil shale development will need technically innovative and financially capable developers, most likely those already producing more than one mineral. Many potential developers so situated may be barred from developing by Section 3. If the bidding history for federal oil shale leases is any guide, the Combined Hydrocarbon Leasing (Tar Sands) Program and future Oil Shale Leasing Program could be adversely impacted. In the four 1974 oil shale lease sales, Tract C-a attracted 8 consortia or single company bids, of which seven bidders held at least one federal coal lease. The remaining three tracts received eight bids of which four were by federal coal lessees. Federal coal lessees were involved in the winning bids on all four tracts. 16/

Economics

Section 3 does not make good economic sense. It imposes a rigid production requirement on a federal coal lessee over a limited time frame with no regard for market conditions. No alternative means, such as payment of advance royalties, is available to the lessee to satisfy the production requirement. Section 3, at best, may serve the questionable purpose of forcing premature production, thereby dumping coal on a market unable to absorb excess production. This is an unfair and inefficient allocation of capital and resources. The market should determine allocation.

Application of Section 3

Underlying the various problems caused by Section 3 is the pervasive concern about the ambiguity associated with the application of Section 3 and the uncertainty generated within the industry by such ambiguities. Section 3 is one of the most intricate and least understood provisions of FCLAA. Many unanswered questions have arisen regarding the obligations and liabilities of the federal coal lessee with respect to the production requirement itself, the imposition and removal of sanctions, lease exchange and transfer constraints, and the like.

The ambiguities and uncertainties of what happens with an assignment of pre-1976 coal leases will undermine the ability to block up logical mining units of reserves through lease assignment. Legitimate developers, who are concerned with Section 3, must grow cautious about acquiring pre-1976 coal leases, whereas speculators, not troubled by Section 3, are still free to purchase them. The normal trading and merging of reserves often necessary to create a coal supply package tailored to the needs of a specific purchaser will be severely hampered.

With so many basic uncertainties about the meaning of Section 3, it seems unavoidable that with the long lead times necessary to obtain the permits and sales contracts to support development that many pre-1976 lessees are now in a dilemma. Even the fundamental question of what is necessary in order to satisfy the production requirement of Section 3 is unanswered as are the questions of what can be done to avoid the leasing bar or lift it once imposed. No one knows whether lease relinquishment or sale will eliminate a Section 3 problem. If pre-1976 coal lessees are not near production, will they push ahead to develop their coal leases in light of the risks? Those lessees proceeding to develop their leases do not know if their efforts are sufficient to satisfy the Section 3 test. With only three years remaining, many legitimate developers proceeding to develop their leases cannot afford to risk further investments to bring their leases into production unless they are sure by the 1986 deadline they can meet the criteria that are finally established for production in commercial quantities.

This means that even those leases with only a minimal amount of predevelopment work remaining cannot proceed to full production. Unless construction of the mine is already substantially completed, it is unlikely (and maybe impossible because of the current soft coal market) to be producing in commercial quantities by August 1986. What then is the lessee's recourse? No one knows what is required to satisfy Section 3 or how to safely avoid it. But, at the same time, developers cannot afford to jeopardize their ability to acquire other mineral leases.

The lessee's dilemma becomes more intense as August 1986 approaches and litigation to resolve the ambiguities inherent in Section 3 and to protect investments becomes more probable. Controversy over interpretation and enforcement will most likely result in lengthy and costly administrative and judicial proceedings. As with previous and current litigation over federal coal leasing, government, industry and the general public all stand to lose if this proves to be the case.

In sum, Section 3 has generated much broader and more serious problems than it was designed to solve. Although the full impact of Section 3 will probably not be realized until the deadline date of August 1986, it already has created substantial uncertainty and has the potential to significantly impact the effective and efficient development of our national resources.

THE MOBIL EXPERIENCE - A CASE IN POINT

In the late 1960's, Mobil, initiated a vigorous acquisition program for coal reserves in various parts of the United States as a potential feedstock base for synthetic fuels. As part of this program, Mobil acquired its one and only federal coal lease. Because of the uncertainty concerning the economic viability and timing of synthetic fuels projects, Mobil initiated development of its federal lease with the objective of selling coal under long-term supply contracts to public utilities or other substantial purchasers.17/ Even so, Mobil still considers its federal coal lease as its prime candidate for a coal based synthetic fuels project.

Mobil's experience in developing its federal lease illustrates some of the unfair and unreasonable impacts of Section 3 on both synthetic fuels developers and coal developers. More importantly, Mobil's case demonstrates that despite a sincere and dedicated effort to develop a coal lease, a lessee in full compliance with Department of Interior diligent development requirements may still be placed in jeopardy by the ambiguities and inflexibility of Section 3.

In February 1971, Mobil obtained its federal coal lease with a high bid of $441 per acre, amounting to a total bonus payment of $1,764,000. At the time, this bid tied for the highest bid for a coal lease. The lease, situated in the Powder River Basin, just south of Gillette, Wyoming, comprises about 4,000 acres and after extensive drilling is now estimated to contain about 400 million tons of coal.

Since the reserves were acquired primarily as a potential synthetic fuels feedstock, it was necessary, in deciding to enter the bidding, for Mobil to take into consideration the fact that no statutory, regulatory or contractual stipulation existed at the time requiring that production commence by a specific deadline in specific amounts or that production commence or continue without regard to market conditions or other economic considerations. Mobil also took note of the lease form provision permitting payment of minimum advance royalty in lieu of production. In entering into the lease, Mobil anticipated its rights and obligations as lessee would be governed by the terms of the lease. In 1976, the enactment of FCLAA and the publication of Department of Interior's implementing regulations, which imposed specific diligent development obligations for pre-1976 coal leases, altered these circumstances.

Mobil and its coal related subsidiaries have been continuously engaged in efforts to develop the federal lease and bordering private lands into a producing property, known as the Caballo Rojo Mine. Within a year of lease acquisition in 1971, drilling was begun and environmental studies were commenced by 1974. The degree and extent of Mobil's commitment to development is best expressed by some important statistics.

-- To date, over $100 million has been invested in the development of this lease. This includes expenses for development drilling, construction of plant and rail facilities, mining equipment and other capital expenses.

-- Over 20 permits or authorizations have been obtained from various local, state and federal government agencies in order to commence production at a cost in excess of an additional $5 million. Necessary studies for permitting were initiated in 1975. The final permit needed to commence construction, one issued by the Office of Surface Mining pursuant to the Surface Mining and Reclamation Act (SMCRA), was obtained in February 1981. Several permits are currently undergoing revision to insure conformity with the permanent program of SMCRA and subsequently revised state procedure. New permits are being obtained to expand production capabilities and economically recover the total reserve base adjacent to the federal leasehold.

-- Expenses for mitigation of social, cultural and economic impact approach $2.5 million and are continuing.

-- 82 employees are engaged at the Caballo Rojo Mine which has an annual operating budget of over $6 million. To meet sales commitments, employees and the operating budget will increase to 123 employees and $22 million, respectively, by 1986.

-- Mobil has bid on seventeen long-term coal solicitations that, according to its records, represent the total offered to Powder River Basin producers during the five year period, 1978-1982. Nine of these solicitations were ultimately withdrawn by the purchasers. Of the remaining eight, Mobil was selected as the coal supplier on three and remains an active candidate on one. The three include two finalized contracts to supply Wyoming and Kansas power plants and a selection as the successful bidder to supply a power plant in Oklahoma, for which a contract is currently being negotiated. The successful negotiation of the first two contracts supported the investment decision to build the mine. All of these contracts are long term (20 years or more) and represent over the life of the contracts about 93 million tons of coal -- about 22% of the recoverable reserves contained in Mobil's federal lease. Competition for such contracts has been fierce. For example, eighteen producers bid on the Oklahoma contract, and twenty-three bid in 1982 for a Texas contract. Negotiations have been further complicated by a rather forbidding marketing environment characterized by excessive increases in rail shipping costs, increasing environmental constraints on the production and use of coal and a lower than anticipated growth in demand.

-- Production at the Caballo Rojo Mine commenced in December 1982. In order to satisfy current contracts, Mobil will produce 1.4 million tons in 1983 with an average shipping rate of 10 unit trains per month. Mobil will produce about 2.0 million tons in 1984 at an average shipping rate of 14 unit trains per month. Because of the location of small tracts of privately owned coal within the federal coal lease and mine area, 3.2 million tons of production during the first several years will be from such private reserves.

-- The mine's permanent facilities and equipment are capable of supporting an annual production of 8 million tons.

In light of this extensive and dedicated effort to develop the federal lease, it seems inconceivable that Mobil could be found in violation of Section 3. Mobil is threatened with such a possibility, however, because of the ambiguous nature of the application of the production requirement of Section 3.

Section 3 requires production in "commercial quantities" by August 1986. It would seem that Mobil has complied with Congressional intent by the construction and operation of its Caballo Rojo Mine. An operation which required well over $100 million to develop, is capable of producing 8 million tons of coal per year and will be delivering at least two million tons per year before August 1986 to customers under twenty-year contracts surely must be considered "commercial." Production will increase as additional contracts are secured in a highly competitive market.

Despite the magnitude of Mobil's effort, Section 3 could be applied in such a way that Mobil does not meet the Department of Interior interpretation of "commercial quantities" until after August 1986. Such interpretation has been ambiguous, but currently appears to require production of at least 1% of a federal lease's recoverable reserves, or about 4 million tons in Mobil's case. Under existing guidance, such an amount must be mined, regardless of the opportunity to market it. No other alternative, such as payment of advance royalties, is available to Mobil to suspend application of the Section 3 sanction should Mobil not produce the prescribed amount until after August 1986. Although Mobil has the mining equipment and processing and loading facilities to comply with the intent of Section 3, its actual coal sales are subject to the provisions of its existing contracts, including excuses for performance by either buyer or seller for causes beyond either's control, which under good commercial practices are found in long-term supply contracts.

Mobil is faced with an unreasonable prospect. It has entered long-term supply commitments and is in the coal business to stay. Mobil has no intent to relinquish or sell this federal coal lease. No one knows if such a sale or relinquishment would eliminate a Section 3 problem anyway. But even if relinquishment was construed as a means to avoid Section 3, Mobil does not intend to do anything that would jeopardize fulfillment of its supply commitments. It also cannot afford to be in noncompliance with Section 3 because of the unwarranted and severe impact on its ongoing oil and gas, phosphate, oil shale and tar sands programs.

This capsulized version of the Mobil experience highlights key problems and difficulties associated with the application and enforcement of Section 3. It illustrates particularly the uncertainty and heightened risk imposed on the lessee by the inflexible and severely punitive nature of this statutory provision. In our view, this risk and uncertainty represents an unreasonable and unnecessary burden on coal producers.

CONCLUSION

It is imperative that this nation maximize the production of its energy resources. This development effort must be accomplished in a reasonable and responsible manner with due regard for the environment. To be meaningful, the statutory guidance to meet this effort must recognize economic reality and be construed and administered with sufficient flexibility to meet the demands of the market. Associated sanctions for noncompliance should be reasonable, relate directly to the violation and be applied with minimum adverse impact on overall energy development. In our view, Section 3 fails to meet these goals. It should be repealed.

# # # # #

FOOTNOTES

1/ House debates on H.R. 6721, January 21, 1976 Congressional Record, p 486.

2/ *Id.*. at p 495.

3/ House Report of the Committee on Interior and Insular Affairs on H.R. 6721, Report No. 94-681, November 21, 1975, p 15.

4/ *Id*.

5/ *Op cit*, Congressional Record, p 486.

6/ *Op cit*, House Committee Report on H.R. 6721, p 9.

7/ June 2, 1983 letter by DOI Deputy Assistant Secretary, Land & Water Resources, to Congressman Jim Weaver, Chairman, Subcommittee on Mining, Forest Management and Bonneville Power Administration, Committee on Interior and Insular Affairs, House of Representatives, Question A-4, page 91.

8/ Id, Question A5, p 1.

9/ Bureau of Land Management, Casper, Wyoming District Office.

10/ U.S.G.S. and Wyoming Department of Environmental Quality, Land Quality Division, Cheyenne, Wyoming; Mobil survey of records, September, 1983.

11/ Op. cit.., Congressional Record, p 493.

12/ Id., at p 496.

13/ Mobil believes that in many cases, the 10-year limitation of Section 7 is unrealistic given the long lead time necessary to develop markets and to permit and construct a mine, and unless relaxed, has all but eliminated federal coal as a feasible resource base for synfuels. However, the subject at hand is repeal of Section 3, not modification of the MLA.

14/ As noted in the Solicitor's Opinion M-36939, September 17, 1981, Section 3 was drafted to apply to leases in effect at the date of enactment - it is the only provision that applies to pre-1976 leases before readjustment:

> Congress intended that the FCLAA not affect pre-FCLAA leases before those leases become subject to readjustment, with one exception - Section 3 of the FCLAA . . .

15/ The size of the bonuses and the numbers of coal developers willing to assume the risk of Western federal leases is going to be determined by a myriad of complex factors some substantially impacted by federal legislative and administrative policy not yet fully developed, such as acid rain, railroad rates and synthetic fuels.

16/ An Evaluation of Selected Provisions of the Federal Coal Leasing Amendments Act of 1976, National Coal Association, June 6, 1983 at pp. 34-35.

17/ As noted in the 1982 Department of Justice report on "Competition in the Coal Industry," the bulk of federal coal leases will be dedicated to serving electric utilities under long-term contracts. The long-term commitment of coal reserves to individual purchasers is valuable for two reasons. It provides certainty of supply and permits substantial economic and operational efficiencies through tailoring boiler design to the specifications of coal from a particular deposit. The utility is then free to select that coal developer's proposal which based on price, coal quality, transportation cost and other variables is evaluated to be the most advantageous and economical. In this way, "competitive market forces match each utility with the coal deposit that has the best available locational and physical attributes from that utility's perspective."

Senator WARNER. Senator Johnston?

Senator JOHNSTON. Mr. Neyrey, we have talked in my office about some alternatives to an outright repeal of section 3 of FCLAA. Let me present to you some of these alternatives, I will expand on them later in written form. I would like you to comment on these. If you need more time to respond I will submit the points to you in writing at a later date.

I'm thinking about four factors as an alternative. First, to require that all leases issued prior to August 4, 1986, for which a mine plan has not been submitted by August 4, 1986, shall be automatically surrendered. Please comment on that first point.

Mr. NEYREY. Certainly from our perspective I would think that would be a very reasonable requirement. From Mobil's viewpoint the more specific problem, obviously we would not have a problem with that since we are mining and I would think that's an acceptable improvement.

Senator JOHNSTON. Second, provide that all leases issued prior to August 4, 1976 for which a mine plan has been submitted but upon which significant surface disturbance has not begun, may be relinquished by the lessee as a matter of right. Once the lease is relinquished, the lessee could secure other leases for coal, oil, gas, and other minerals subject to the Mineral Leasing Act of 1920.

Mr. NEYREY. That would also seem very reasonable.

Senator JOHNSTON. Three, amend the section 3 prohibition so that it prevents only the future leasing of Federal coal, if a lease has not been developed in 10 years. At the same time clarifying that once the 1-percent production threshold has been obtained, the prohibition will no longer apply to securing other minerial leases so long as the 1-percent level is maintained.

Mr. NEYREY. Obviously that's a significant relief from where we are today and I think it would certainly be welcome. On the other hand, I think still having a 10-year requirement for 1 percent, that is oblivious to the marketplace is rather difficult to insure in some instances, especially when you consider if you wanted to hold a lease for synthetic fuel production it could very possibly be 15 years of relative expedited effort and still not have a facility in production that would be consuming 1 percent of the lease.

I would think that perhaps another alternative might be something like a financial penalty without the penalty of not getting another Federal coal lease. For example, prepaid royalties would eliminate a lot of speculation. People would be holding a lease if they really had an intention of pursuing it or were in eminent development of it. When you look at the long leadtimes of finding customers, going through permitting, developing the mine, it's surprising how many years go by how quickly, and also given the fact that the marketplace, for example today, who, 5 years ago, would have ever thought we'd have such a soft market and that you really could not just go out and find customers.

Senator JOHNSTON. Four, provide that the royalty rate on a lease issued prior to August 4, 1976 which is not meeting the production in commercial quantities requirement will be increased along a sliding scale until such time as commercial production is achieved, keeping in mind of course that royalties on most pre-FCLAA leases were set at 15 to 20 cents per ton and that on the leases issued and adjusted since 1976, the royalty rate is 12.5 percent of mine value, which amounts to about $2 to $3 per ton.

Mr. NEYREY. Yes, I think that relieves the sanction of your either complying with section 3 or you're prohibited from all Federal leases, obviously any relief from that is greatly beneficial compared to where we are today. I think if you recognize that in spite of all the good intentions, production can be more than 10 years in coming for a variety of reasons and, therefore, if the penalties that accrue to that reflect that people have made sincere efforts and tried and you're putting penalties only on a whole lot of speculators, then I don't think we would have any problems.

Senator JOHNSTON. I want you to thoroughly consider my ideas. I'll submit them to each of you for your comments and I would appreciate any alternative suggestions. Again, I believe that an outright repeal of section 3 is probably more than I would want to do. Clearly the situation cries out for some reasonable relief. It seems to me that something in line with my suggestions would do away with speculation on coal leases. It would also help order simultaneously the market so that lessees who have not achieved production in commercial quantities on their leases won't flood the market by moving to divest themselves of these leases. I think we could do it in a more orderly way.

Mr. NEYREY. That is a serious problem.

Senator WALLOP. I wonder if you would be agreeable to ask Mr. Perry the same questions by letter?

Senator JOHNSTON. Yes, I will ask all of the witnesses to submit their comments.

Senator WALLOP. One of the problems we can't anticipate right now with regards to section 3 is what the Congress might do if they begin requiring western coal to meet eastern coal standards whether it's needed or not. We may put this off another two decades beyond the capabilities of various companies to do any of the things that you've suggested, and that's a new rule injected in the ball game in about the fifth inning and it will be very difficult for people to meet these requirements. Flexibility may be able to be built into them. There are so many other things now that do opt against speculation in coal leases from where they were before the enactment of section 3. That's less of a worry than it was then.

Senator JOHNSTON. Obviously these ideas are not final ideas, but it's an attempt to do away with speculation and to have a more orderly market. It seems to me an outright repeal would lead to continued speculation and disorder in the market.

Senator WALLOP. Section 7 still requires diligent development and therefore mitigates against speculation.

Senator JOHNSTON. It still has no regulation.

Senator WALLOP. It would be better perhaps to get the regulations and see where we are. I was impressed by Mr. Perry's discussion of what would happen in an either/or instance. It affects revenues for the State, it affects the orderly development of coal, it affects the cost to consumers. As Mr. Neyrey said, they originally bought this property for synthetic fuel production. That is something that still seems as far away as it was when we were working on that several years ago. And I don't know when that may come around. I don't think anybody can know when that may come around.

Senator **Johnston**. Eventually it will.

Senator **Wallop**. Eventually it will, but what we have done to ourselves with the availability of supply in the meantime may be the thing that makes it marketable but it won't be very good for the consumers.

Your testimony was that $100 million has been spent in construction and operation of your Caballo Rojo mine. Is that correct?

Mr. **Neyrey**. Yes.

Senator **Wallop**. And there's not enough flexibility in section 3, that Mobil feels can be waived or otherwise provide for relief that may be necessary.

Mr. **Neyrey**. We see absolutely no flexibility in section 3 whatsoever and we are seriously concerned about our ability to comply with it.

Senator **Wallop**. That's a hell of a way to speculate.

Mr. **Neyrey**. It certainly is.

Senator **Wallop**. Senator Hecht?

Senator **Hecht**. No questions.

Senator **Johnston**. When would you have to make your decision as to what you're going to do?

Mr. **Neyrey**. We have so many registrations, to be honest, early next year for example in terms of do we try to file for an LMU to consolidate some private property that we mine in conjunction as I mentioned earlier; filing for an LMU has some adverse impacts for example it requires us to have 40-year mine-out, accelerates the royalty rate, and it has some onerous concerns. And we'll be faced with those decisions almost eminently. Early next year we'll be making those kinds of decisions because we just have no option and we've got to try anything we can to try to comply with section 3.

Senator **Johnston**. Thank you.

Senator **Wallop**. Thank you. Next is a panel consisting of Mr. John Hardin and Mr. Ed Gibbs.

STATEMENT OF JOHN R. HARDIN, DOMESTIC LAND ACQUISITION MANAGER, ANACONDA MINERALS CO., DENVER, COLO., ON BEHALF OF THE COAL AD HOC COMMITTEE, WESTERN REGIONAL COUNCIL

Mr. **Hardin**. Good morning. I'm John Hardin, domestic land acquisition Manager, Anaconda Minerals Co., in Denver, Colo. I appear before you today on behalf of the Western Regional Council's Coal Ad Hoc Committee.

I request our written statement be entered in the record and I will summarize our comments.

Senator **Wallop**. It will be in its entirety.

Mr. **Hardin**. The Western Regional Council is a coalition of 45 major companies active in the 8 Rocky Mountain States. Our membership includes businesses engaged in financial, energy, mining, transportation, manufacturing, and other enterprises.

The Western Regional Council appreciates this opportunity to appear before the subcommittee. We support changes to the Federal Coal Leasing Amendments Act which I will refer to as the 1976 act included in S. 1634. In addition we recommend an amendment to authorize payment of advanced royalties in lieu of production.

The diligence and lease prohibition provisions of the 1976 act responded to the perception in Congress that Federal coal leases were being held indefinitely without plans for development and that there was a pending coal boom. Proposed national energy plans, responding to the effects of the OPEC embargo, urged greater reliance on coal. Although Federal coal leasing was at a halt in the mid-1970's, the 1976 act reflected anticipation of aggressive coal development and demand for Federal coal leases. There have been numerous changes since the passage of the 1976 act and the time has come to reevaluate the product of those perceptions.

First, there are new regulatory requirements. Complex new legislation such as the Surface Mining Control and Reclamation Act of 1977, has been adopted, requiring operators to expend a good deal of time and effort before lease production. The decision to proceed to production will be determined by markets or sales contracts, but we can now expect 4 to 5 years of work from that decision to commencement of mine construction.

Second, the demand for coal from Federal leases has not met the expectations of 1976. Oil and gas prices have stabilized reducing the anticipated economic forcing of fuel switching to coal. Conservation practices and other factors slowed the anticipated acceleration in electrical power demand. Furthermore, potential export markets have not materialized to the extent some envisioned.

All these factors and others have contributed to a current slump in coal markets, longer leadtimes in actual mine startup, and extreme caution by coal producers in moving ahead toward production of a lease or acquiring additional coal leases. While we expect coal markets to revive, the current situation demonstrates why we need flexibility in regard to diligence. The Interior Department recognized these circumstances when it recently modified the diligence and continued operations provisions of the Federal coal management program. Those modifications protect the integrity of the concept of diligent development, but recognize the drawn out procedural process prior to mine startup. However, the regulations were not able to make changes in section 3.

The Western Regional Council believes that the public interest today can be served through the diligence concept in the regulatory framework without the harshness required under section 3 in present law. We recommend two changes in this regard, the repeal of section 3 of the 1976 act as provided in S. 1634 and allowing the payment of advanced royalties in lieu of production in commercial quantities.

Section 3 will particularly affect those integrated companies with pre-1976 coal leases which are active in leasing other minerals. It may result in a wholesale abandonment of affected coal leases by these companies, reduced competition for other mineral leases, and/or extensive litigation.

Section 3 is a punitive, unnecessary provision. It goes beyond the reasonable diligence requirements otherwise provided which adequately protect the public interest. It provides no flexibility whatsoever to recognize changes since it was enacted, or factors contributing to longlead times and changing coal markets that we find today.

Section 3 of the 1976 act should be deleted.

The Western Regional Council also believes the public would be best served by allowing nonproducing leases to pay reasonable advanced royalties in lieu of production beginning in the 11th year and through the lease term if production in commercial quantities has not been achieved. An economic penalty beginning in the 11th year would serve as a deterrent to speculation, and would provide the Federal Government with a small revenue stream until production is achieved. Advanced royalties would also provide financial incentives for the lessee to move toward actual production while allowing him the flexibility he probably needs to achieve it.

It is the production royalties paid under a lease which provide the greatest return to the Federal Government. If a lease is canceled for failure of production in commercial quantities with no opportunity for payment of advanced royalties, the Government can expect no revenues from the tract until and unless it is released. Royalties would not be received then until and unless production actually began by the new lessee.

Especially at this time when coal markets are depressed and when new laws and environmental considerations have caused a stretch out in premining activities and requirements, advance royalties in lieu of production in commercial quantities makes eminent sense. We recommend that S. 1634 be expanded to amend the Coal Leasing Act to allow payment of advanced royalties in lieu of production, rather than restricting this privilege to producing leases as is presently authorized.

I'll briefly speak to S. 1634's other two provisions. We agree that there are instances when tracts in an LMU should not have to be contiguous. We believe the contiguous requirement is not essential if the other statutory criteria are met. Opportunities are provided in the LMU designation process to determine if circumstances warrent inclusion of a noncontiguous parcel.

The deletion of the 3-year requirement in section 7(c) of the 1976 act for filing an operation and reclamation plan also makes good sense. Given the variables of coal markets and in production and environmental requirements, a 3-year, fixed filing deadline will probably result in the necessity of numerous later amendments to the plan once filed and once the lease nears the development stage. So long as the plan, as required by 7(c), must be filed prior to a significant disturbance of the environment, the 3-year filing requirement is unnecessary.

Thank you gentlemen for allowing me to submit the statement on behalf of the Western Regional Council.

[The prepared statement of Mr. Hardin follows:]

Statement by
John R. Hardin
On Behalf of the Coal ad hoc Committee of
The Western Regional Council
Before the Senate Energy and Natural Resources
Subcommittee on Energy and Mineral Resources
The Honorable John W. Warner, Chairman
October 18, 1983

I am John R. Hardin, Domestic Land Acquisition Manager for Anaconda Minerals Company, Denver, Colorado. I appear before you today on behalf of the Western Regional Council's Coal ad hoc Committee.

The Western Regional Council is a coalition of 45 major companies active in the eight Rocky Mountain States. Our membership includes businesses engaged in financial, energy, mining, transportation, manufacturing and other enterprises.

The purpose of the WRC is to provide a forum for the resolution of issues which uniquely affect the business community in our region and to recommend policies to State and Federal governments which recognize the need for both a healthy economy and a healthy environment in which to live.

Since it was organized in 1977, the WRC has been actively interested in the Federal Coal Program working with the Department of the Interior and with Western Governors on coal leasing issues. Our membership includes both coal producers and users as well as companies not directly affected by Federal coal policies. The WRC has an overall interest in a workable Federal coal program which will foster economic growth and stability in the public land states of the Rocky Mountain West.

The Western Regional Council supports enactment of S. 1634 and we appreciate this opportunity to appear before the Subcommittee.

S. 1634 would remove from the Federal Coal Leasing Amendments Act three unnecessary and troublesome requirements, namely, the prohibition of acquisition of other leases under the Mineral Leasing Act if production in commercial quantities is not achieved on coal leases within 10 years, the requirement that components of an LMU be contiguous, and the requirement to file a mine plan within three years of acquiring a lease. While we support all three of these changes, our greatest interest is in the first, repeal of Section 3 of the FCLAA.

Diligent development has been a principle in Federal coal leasing since enactment of the Mineral Leasing Act of 1920. Prior to the Federal Coal Leasing Amendments Act of 1976, payment of annual rentals met the Interior Department's diligence requirements. The FCLAA mandated a 10 year diligence period. Lessees who held an undeveloped coal lease at time of enactment were to be precluded from obtaining any further Federal leases, coal or other minerals, if production in commercial quantities were not achieved in 10 years - 1986.

The diligence and lease prohibition provisions of the FCLAA were enacted in response to a perception in the Congress that Federal coal leases were being held for speculation rather than with the intent of production. Committee reports accompanying the Act cited the number, acreages, and primary holders of Federal coal leases. They inferred concentration of public coal resources in the hands of a few and expressed concern that leases could be held indefinitely without development to the detriment of the public interest.

Although Federal coal leasing was at a halt in the mid-70's, the FCLAA reflects attempts by Congress to react to the repercussions of the OPEC oil embargo. There was uncertainty as to the nation's energy and financial security. Dramatic increases in petroleum prices and a series of proposed national energy plans encouraged the view that domestic coal resources provided the most viable path toward energy independence and national security. A shift to coal as our primary energy source was expected and would mean a dramatic boom in coal development and demand for Federal coal leases. The Congress moved to put in place mechanisms it felt were necessary to protect the public interest, the environment, and competition within the context of those events and projections. The time has come to re-evaluate the product of those perceptions.

There have been numerous changes since passage of the FCLAA. Additional complex legislation dealing with coal mining, such as the Surface Mining Control and Reclamation Act of 1977, has been adopted. That Act and the resultant regulations are extremely complex and to comply with its requirements requires an operator to expend a good deal of time and effort before lease production can commence. From a decision to proceed to production, based on market considerations, it may take four to five years before mine construction commences. A slow market or the specifics of a sales contract may delay this process for an undetermined period. These requirements and additional lead times compound the lead times that were already understood at the time of enactment of the FCLAA. Interior Department comments noted then the delays in delivery of mining equipment, an eight to ten year lead time between a decision to build a coal consuming plant and the time when coal deliveries are needed, and the nature of long-term coal delivery contracts.

1977 amendments to the Clean Air Act blocked the anticipated use of low sulfur coal, largely from western Federal coal leases, to reduce power plant emissions in the East. Questions remain about implications for western Federal coal demand from Congressional action on a current re-write of the Clean Air Act and acid rain reduction provisions. Oil and gas prices stabilized reducing the anticipated economic forcing of fuel switching to coal. Conservation practices and other factors slowed the anticipated acceleration in electrical power demand and the construction of new coal fired generation capacity and coal consumption. Frustration in accurately forecasting electrical needs has added additional uncertainty in long term coal market projections. Potential export markets have not materialized to the extent some envisioned.

All of these factors and others have contributed to a current slump in coal markets, longer lead times in actual mine start-up, and extreme caution by coal producers in moving ahead toward producton of a lease or acquiring additional leasable coal properties. While we expect coal markets to revive, the current situation demonstrates why we need some flexibility in regard to diligence.

The operator who is today charged with meeting a diligence period can be placed in an untenable position. The Department of the Interior recognized the problems involved in these kinds of circumstances when it made modifications published in July 1982 in the diligence and continued operations provisions of 43 CFR 3400. Those modifications protect the integrity of the concept of diligent development, but redefine commercial quantities to a more realistic production level. They also recognize the potentially drawn out procedural process ahead of mining by providing that the 10 year period can begin when a lease is incorporated into a logical mining unit or upon the first lease adjustment after 1976. However, the regulations were not able to make changes in Section 3 of the FCLAA.

The concept of diligent development has merit in that it serves to discourage speculation and restricts leasing to persons seriously contemplating operations. The Western Regional Council believes, though, that the public interest today can be served thru this concept in a regulatory framework without the harshness required under Section 3 in present law.

We recommend and encourage the support for two specific changes in this regard, the repeal of Section 3 of the FCLAA as provided in S. 1634, and allowing the payment of advanced royalties in lieu of production in commercial quantities.

Section 3 particulary will affect those integrated companies with pre-1976 coal leases which are active in leasing other minerals besides coal. It may result in a wholesale abandonment of affected coal leases by these companies, reduced competition for other mineral leases, and/or extensive litigation.

Section 3 is a punitive, unnecessary provision. It goes beyond the reasonable diligence requirements otherwise provided for in statute and regulation which adequately deter speculation and protect the public interest. It fails to recognize the many changes in circumstances described above which have occurred since enactment in 1976. It provides no flexibility to address any of the kinds of factors which have contributed to long lead times and changes in coal markets. Section 3 of the Federal Coal Leasing Amendments Act should be deleted.

The Western Regional Council believes that the public interest would be best served by allowing non-producing leases to pay reasonable advance royalties in lieu of production beginning in the 11th year and through the lease term if production in commercial quantities has not been achieved. An economic penalty beginning in the 11th year would serve as an adequate deterent to speculation and would provide the Government with greater assurances of development. Furthermore, payment of advanced royalties would provide the Federal Government with a small revenue stream until production is achieved. Obligations under payment of advanced royalties would also provide a financial incentive for the lessee to move toward actual production in the near future.

We believe this is by far a preferable alternative to Section 3 of the FCLAA and should be applicable as well to post 1976 leases. The Interior Department would perhaps be able to avoid a costly re-leasing process and would probably witness actual lease development more quickly than if a lease were cancelled and reawarded to another party through a re-leasing process. It is the royalties paid under a lease which provide the greatest return to the Federal government. If a lease is cancelled for failure of production in commercial quantities with no opportunity for payment of advanced royalties, the Government can expect no revenues from the tract until and unless it is re-leased and then royalties would not be received until and unless production actually began by the new lessee after another long lead time.

Especially at this time when coal markets are depressed and when new laws and environmental considerations have caused a stretch out in pre-mining activities and requirements, advance royalties in lieu of production in commercial quantities makes eminent sense. The WRC recommends that S. 1634 be expanded to amend the Coal Leasing Act to allow payment of advanced royalties in lieu of production rather than restricting this privilege to producing leases as is presently authorized.

Let me now briefly speak to the other two provisions contained in S. 1634. We agree that there are circumstances in which the tracts in an LMU should not have to be contiguous as now provided in statute. If the other criteria are met (under the effective control of a single operator and be able to be developed and operated as a single operation) we do not see why the requirement for being contiguous is essential. Opportunities are readily available in the LMU designation process to fully review whatever circumstances may warrent the inclusion of a non-contiguous parcel. Removal of the contiguous requirement will result in a more workable and flexible law that is better able to address unusual and specific operations.

The deletion of the three year requirement in section 7(c) of the FCLAA for filing an operation and reclamation plan also makes good sense. Given the many uncertainties and variables involved in coal markets and in production and environmental requirements, a three year, fixed filing deadline will more often than not result in the necessity of numerous later amendments to the plan once filed and once the lease nears the development stage. So long as the plan, as required by 7(c), must be filed "prior ~~to taking~~ any action on a leasehold which might cause a significant disturbance of the environment," the three year filing requirement is unnecessary and can be deleted without jeopardizing the purposes of the subsection.

Thank you once again for providing the WRC with this opportunity to testify on behalf of S. 1634.

STATEMENT OF EDWARD C. GIBBS, VICE PRESIDENT, COAL, ROCKY MOUNTAIN ENERGY CO., BROOMFIELD, COLO.

Mr. GIBBS. My name is Ed Gibbs. I'm vice president of coal for Rocky Mountain Energy Co. Rocky Mountain Energy is the mineral subsidiary for the Union Pacific Corp. We appreciate the opportunity to discuss coal leasing and the diligent development of federal coal lands today. I would also like to briefly address the need to repeal section 2(c) of the Leasing Act at the end of my testimony on leasing. I've also submitted written testimony for the record and I will summarize that testimony.

We believe the Federal Government should have an ongoing coal leasing program to insure that adequate amounts of coal are leased. We feel that such a program is good public policy for the following reasons: First of all it is virtually impossible to determine precisely the quantities and types of coal the market will demand at any one time to meet the Nation's energy needs. In always having adequate quantities and types of coal available for the market will tend to lower coal prices, reduce overall energy costs, allow for more efficient resource allocation, and assure competitive coal markets.

The similar bonus payments that can be expected as a result of what we might call overleasing will be offset at least in part by the Federal Government receiving royalties at an earlier date. Our recommendation for economic diligence provisions as I will describe later would further offset the reduced bonus payments.

In pursuing a policy of continued high levels of leasing we feel it's necessary to include in the leasing law well defined diligence provisions. These provisions are necessary to insure that coal lands are not leased for the purpose of speculation, to ensure that leaseholders are prevented from holding large reserves off the market and thereby reducing competition, and that the leases are developed in a diligent manner or they're returned to government.

Although we feel the diligence requirements must be an integral part of the leasing program, we are not convinced that the rigid requirements of section 6 and section 3 of the 1976 Federal Leasing Act amendments serve the interest of either the lessees or the Federal Government. We suggest consideration of the following:

Section 6 of the FCLAA currently provides any lease will be terminated unless coal is being produced from the lease in commercial quantities within 10 years from date of issuance. Although 10 years might seem like a sufficient period of time to develop a new mine, new Federal and State statutes have seriously affected the time required to develop such a new mine. Payments of advanced royalties or so-called economic diligence, it may be possible to retain the lease and still offering a lessee flexibility. And I will elaborate just a little bit on this later.

Section 3 of the FCLAA could keep the Secretary from issuing any mineral leases to holders of pre-1976 FCLAA Federal coal leases not producing commercial quantities within 10 years of the passage of the act. The date specified August 4, 1976, so that now the critical date becomes August 4, 1986, and with this date fast approaching pre-FCLAA leaseholders are concerned that their leases will not meet the commercial quantities test thereby forfeiting their right to acquire not only new coal leases but new mineral leases of any kind. Because of this situation many companies are calling for repeat of section 3. RME does not feel total repeal of this section is warranted, however we do recommend that Section 3 be modified so that the penalty for holders of leases not developed in the 10-year timeframe be a prohibition on new coal leases rather than mineral leases of all kinds.

We also recommend that provisions be included in this section to allow the lessee the option of paying advance royalties at the end of the 10-year period in lieu of forfeiting rights of coal leases. In other words the same approach as the previous testimony in regard to an economic diligence program.

RME is both a coal operator and natural mineral owner in the West and has experience as both a lessee and a lessor. From our experience we feel there are several ways advance royalties can be handled. For example, since diligent development regulations require the production of 1 percent of the leased preserves in 10 years, the advance royalty could be equal to royalty for production at the rate of 1 percent of reserves in the lease. The formula then would be advanced royalty would equal 1 percent of the leased reserve times the projected sales price times 12.5 percent under the current royalty rates.

For instance, a lease that would contain 40 million tons of coal, an average sales price of $25 a ton, there would be annual advanced royalty payments of about $1.5 million a year.

Another approach is Federal regulations require logical mining to be totally mined out in 40 years. One could calculate the advance royalty requirement of buying, attempting to match a production rate, royalty for production of 2.5 percent of these reserves.

In this case you take 2.5 percent of the leased reserves times the project sales price, times 12.5 percent in the same mine described above, it would be about $3.1 million per year.

Perhaps another way we could approach it is to estimate the likely rate of production from a lease and then set the advance royalty rate at some fixed percentage of the projected production royalties. For example if the mine were projected to produce 1 million tons a year, these royalties would be set at 1 million tons times the predicted sales price times 12.5 percent times a factor such as 0.5, and the factor could be adjusted. It could be 0.25, 0.75, and would be set arbitrarily.

The key is to set the advance royalty high enough to provide an incentive to produce but low enough so that it's projected to be fully recoupable and thus allow for favorable tax treatment.

As a matter of policy once you attempt to set up an advance royalty formula which is easy to administer, it has the smallest number of judgemental variances to establish. For example, it's more difficult to estimate a likely production rate than to establish the number of recoverable tons of the lease. Projected sales price could come from an average coal price from several months in the area rather than being calculated in detailed feasibility studies.

It's probably a little easier for us to negotiate a term which account for the unique circumstances associated with each property than it would be for the Federal Government. The Federal Government would probably function more smoothly as clear policy guidelines. For instance we set the date for advance royalty payments to begin on our best guess of when production could occur from the lease. We're proposing the Government on the other hand start these payments in year ten as an option.

Let me summarize what we feel Congress should consider on this issue.

One, we think the Federal Government should have an ongoing leasing program which works to insure there is always an abundant selection of various coals available in the marketplace.

Two, all leases should contain the requirement that the lease be diligently developed or lost.

Three, section 3 should be amended so the diligence provisions would only affect the issuance of future coal leases. A provision should also be added to allow the lessee the option of paying advance royalties in lieu of forfeiting rights on new coal leases.

Section 6 should be modified to allow a lessee the option of paying advance royalties to avoid termination of the lease.

As I mentioned at the beginning of my remarks, I would like to briefly address the repeal of section 2(c) of the Mineral Leasing Act which currently prevents railroads and independent affiliates of railroads from obtaining new Federal coal leases. Why should 2(c) be repealed? Section 2(c) only served to reduce competition in the coal industry and is not in the best interest of industry, the Federal Government or the public.

Under both the prior and Reagan administration, the Justice Department concluded that 2(c) is anticompetitive and should be repealed. Last December the Interior Department joined the Justice Department for a unified administration position which holds in a legal sense; 2(c) not only bars future leasing of railroads but also the independent coal affiliates of railroads. At the same time the Interior emphasized that it shared Justice's concern that barring railroads and affiliates from the coal leasing is anticompetitive and counterproductive. Interior also reemphasized its continued support of 2(c) repealed.

Congress has granted the attorneys general statutory right of case-by-case review of every coal lease prior to issuing. This approach in section 15 of FCLAA is designed to guarantee competition of the coal industry and eliminate any conceivable need for 2(c).

Railroad land grants do not provide controlling of western coal production. Only a small fraction of the 200 billion tons of uncommitted Federal and non-Federal land is held by any railroad. For example, Union Pacific's reserves are less than 1 percent of the total western reserve.

In recent testimony, the commission of fair market value policy for Federal coal leasing, the Interstate Commerce Commission concluded that ICC regulation of the railroad industry together with Justice Department review was adequate to protect these types of abuses in market power. Clearly the competition of railroad affiliates in Federal coal leasing would far outweigh any of the hypothetical risks that have been raised in the 2(c) repeal.

Thank you very much.

[The prepared statement of Mr. Gibbs follows:]

STATEMENT OF EDWARD C. GIBBS,
VICE PRESIDENT-COAL, ROCKY MOUNTAIN ENERGY
BEFORE THE SENATE ENERGY AND
MINERAL RESOURCES SUBCOMMITTEE
October 18, 1983

Rocky Mountain Energy, the mineral development subsidiary of Union Pacific Corporation, appreciates this opportunity to discuss diligent development of federal coal lands. I would also like to briefly address the need to repeal Section 2(c) of the Mineral Leasing Act. But first, let me focus on the primary thrust of our testimony--due diligence.

In its original form, the Mineral Leasing Act of 1920 did not penalize a lessee for failing to develop federal coal leases in a timely manner. As a consequence, it had become clear by the 1970s that companies and individuals were speculatively acquiring and trading federal leases with no intention of producing coal from them. Such activities led to the decade long coal leasing moratorium and caused Congress to amend the Act significantly in 1976.

The Federal Coal Leasing Act Amendments of 1976 (FCLAA) addressed speculative holding and non- production of federal coal in three principal ways. First, Section 4 terminated noncompetitive preference right leasing, subject to valid existing rights. Second, Section 6 specified a 20-year lease term and "for so long thereafter as coal is produced annually in commercial quantities." Most importantly, Section 6 sharpened the diligence requirement for new leases by adding that any lease not producing in commercial quantities at the end of 10 years would be terminated.

Finally, Section 3 of the FCLAA prohibited the Interior Secretary from issuing any new mineral leases to holders of pre-FCLAA federal coal leases not producing in commercial quantities within 10 years from passage of the act. Section 3 specifies that for holders of leases acquired prior to FCLAA enactment, which was August 4, 1976, the 10-year diligence period ends on August 4, 1986.

With this date fast approaching, many holders are concerned that their pre-FCLAA leases will not meet the commercial quantities test, thereby forfeiting their right to acquire other mineral leases. Many concerned lease holders have called for the total repeal of Section 3.

The other side of the debate is centered around the need for some equity between old leases and new leases. As the situation now stands, Interior has administratively relaxed diligence rules so that many old leases, which would have been required to meet the 10-year diligence deadline in 1986, will now not face diligence until the late 1990s. However, this action did not affect the Section 3 prohibition against acquisition of new leases. Therefore, Section 3 repeal would eliminate the only remaining means of enforcing diligence on pre-FCLAA leases.

RME feels there is a middle ground in this debate which will answer concerns on both sides. As a coal operator and major mineral owner in the West, we have had an opportunity to view the diligence issue from a variety of perspectives.

Conceptually, RME believes the federal coal management program should assure that adequate amounts of coal are leased. It can never be known precisely how much to lease. Therefore, the best policy would be to lease more tracts than can be expected to be developed. Further, to insure that coal purchasers can select from a wide cross-section of coal types and grades, the federal government should lease as many types of coal in a variety of regions.

It is important to understand that diligent development lease stipulations can be a trade-off for the "bonus bids" received from competitive lease sales. However, since royalty payments are typically a much greater percentage of compensation for a lease, earlier royalty payments are much more valuable than slightly larger bonus payments. Additionally, leases issued and not developed within 10 years will be returned to the federal government and possibly leased again, when a second bonus would be received.

As I said earlier, we feel that the government should "overlease." This will tend to lower coal prices, reduce overall energy costs and allow for more efficient resource allocation. Such a policy calls for a well defined diligence provision in the leasing laws. The whole point in "overleasing" is to develop a competitive market for coal reserves. If a lease, once issued, did not require diligent development, companies or individuals could tie up large reserves indefinitely and still remain significant competitors for new reserves.

Section 6 of the FCLAA provides more than adequate diligence for new leases in mandating cancellation if the lease is not producing in 10 years. RME has no specific quarrel with this approach for new leases. Companies bidding on new leases know of the requirement and value the potential lease accordingly. Certainly 10 years is a long time to wait for royalty payments to begin. On the other hand, new federal and state statutes affect the time required to bring a new mine into production. Through economic diligence or advance royalties, there may be a way to continue to utilize the 10-year incentive while still offering a lessee flexibility. I will elaborate on this later.

The real "diligence" issue during FCLAA consideration was not how to force development on new leases, but how to apply diligent development requirements to the more than 500 federal coal leases already issued. Any retroactive application would have to be applied as not to violate the contractual rights of existing leaseholders.

Congress decided to simply prohibit the Interior Secretary from issuing any new mineral leases to an entity failing to produce coal from a lease in "commercial quantities" within 10 years from FCLAA passage. At the end of 10 years, a lease with marginal development potential could be dropped, allowing the former leaseholder to once again participate in new leasing.

However, Congressional intent has been interpreted to mean that companies holding nonproducing federal coal leases beyond 10 years, as well as their parent company and affiliated companies, are prevented from acquiring future mineral leases under the Mineral Leasing Act. No other leasable mineral is subject to similar penalties.

Responsible public policy should not tie development of one type of mineral to participation in the development of other minerals. The leasing program would be better served by only prohibiting issuance of new coal leases to entities which hold a pre-FCLAA coal lease 10 years past FCLAA enactment without producing coal.

Perhaps the only valid argument against fixed diligence requirements is inflexibility and potential to penalize a company in the advance stages of construction but not quite able to meet the deadline. RME has chosen a completely different approach to achieving diligent development in our leases. We establish advance royalty payments to create an incentive to move a lease into production.

The use of advance royalty provisions, rather than rigid time requirements, provides the lessee with a degree of economic choice. If conditions at the end of a specific time frame warrant, an advance royalty could be paid to hold the lease longer. Otherwise, the lease would be relinquished.

Advance royalty provisions, so-called economic diligence, could become a part of both Section 3 and Section 6 dealing with existing leases and new leases respectively. For existing leases, the lessee could pay advance royalty in lieu of a restriction on acquiring new coal leases under Section 3. For new leases, Section 6 could be modified to allow payment of advance royalties at the end of 10 years instead of having the lease automatically cancelled.

The actual amount of advance royalty is probably not important within a fairly wide range. For favorable tax treatment, these royalties must be recoupable from projected production royalties. As a matter of sound public policy, they probably need to approximate production royalties which would be paid if the lease had met diligent development requirements. Three approaches come to mind:

1. Since diligent development regulations require the production of one percent of the lease reserves within 10 years, the advance royalty payment could be equal to the production royalty from production at the rate of one percent of the reserves in the lease.

   Advance royalty = one percent of the lease reserves X projected sales price X 12.5 percent.

2. Since federal regulations require a logical mining unit (presumably a lease) to be totally mined out in 40 years, one could calculate the advance royalty requirement by attempting to match a production royalty for production of 2.5 percent of the lease reserves.

   Advance royalty = 2.5 percent of the lease reserves X project sales price X 12.5 percent.

3. One could estimate the likely rate of production from a lease and then set the advance royalty as some fixed percentage of the projected production royalties. For example, if a mine were projected to produce one million tons per year, the advance royalty could be set at 1,000,000 X projected sales price X 12.5 percent X 0.5. In such a formula, the factor 0.5 could be .25 or .75 and would be set arbitrarily. The advance royalty should be set high enough to provide an incentive to produce, but low enough so it is projected to be fully recoupable for favorable tax treatment.

Further, advance royalty formulas should be easy to administer, with a minimum of judgmental variables. For example, it is more difficult to estimate a likely production rate than to establish the number of recoverable tons in a lease. Projected sales price could come from an average of coal prices from similar mines in an area rather than from detailed feasibility study projections.

RME arrives at advance royalty requirements in several ways. As a private company, it is easier to negotiate terms which account for the unique circumstances associated with each property than it would be for the federal government. The government's program would probably function more smoothly with clear policy guidelines. For instance, we set the date for advance royalty payments to begin on a best estimate of when production could occur from a lease. We are proposing the government, on the other hand, start these payments in year 10 as an option to lease termination.

Let me summarize RME's thought's on due diligence.

1. The federal government should have an on-going leasing program which works to assure there is always an abundant selection of various coal available in the market place.

2. All leases should contain the requirement that the lease be diligently developed or be relinquished.

3. Section 3 should be amended so that diligence provisions would only affect the issuance of future coal leases. A provision should also be added to allow the lessee the option of paying advance royalties in lieu of forfeiting rights to new coal leases.

4. Section 6 should be modified to allow a lessee the option of paying advance royalties to avoid termination of the lease.

Section 2(c) of the Mineral Leasing Act

As part of our testimony, I would like to remind the Committee that repeal of Section 2(c) of the Mineral Lands Leasing Act continues to be extremely important to Rocky Mountain Energy. Any time this Committee considers amendments to the 1920 Mineral Lands Leasing Act, as it is doing today, we feel it is necessary to present brief comment on Section 2(c).

- Section 2(c) only serves to reduce competition in the coal industry which is not in the best interest of industry, federal government or the public.

- Under both the Carter and Reagan Administrations, the Justice Department concluded that 2(c) is anticompetitive and should be repealed.

- Last December, the Interior Department joined the Justice Department for a unified Administration position which holds that in a strict legal sense 2(c) not only prevents future leasing to railroads but also to independent coal affiliates of railroads. At the same time, Interior emphasized that it shared Justice's concern that barring railroads and their affiliates from federal coal leasing is anticompetitive and counterproductive. Interior also reemphasized their continued support of 2(c) repeal.

- Congress has granted the attorney general statutory right of case-by-case review of every coal lease prior to issue. This finely tuned approach in Section 15 of FCLAA is designed to guarantee competition in the coal industry.

Railroad land grants do not provide them a controlling interest in Western coal production. Only a small fraction of the 200 billion tons of uncommitted federal and non-federal Western coal is held by any railroad. For example, Union Pacific's reserves are less than 1 percent of total Western reserves.

Railroads are also subject to acreage limitations (46,080 acres per state) on federal lease holdings. This restricts RME to only a few modest projects within its Wyoming land grant checkerboard.

Clearly, the added competition of railroad affiliates in federal coal leasing far outweighs any of the hypothetical risks that have been raised against 2(c) repeal.

Senator WALLOP. Senator Johnston.

Senator JOHNSTON. Do I take it when you say due diligence that you mean a due diligence requirement would keep out the overleasing? Did you mean the economic due diligence of prepaid or advance royalties?

Mr. GIBBS. Yes, prepaid or advanced. Royalty that is recoverable from future production and that's really a critical point because that royalty then receives favorable tax treatment if it is fully recoupable.

Senator JOHNSTON. Tell me what you mean by recoupable from future production.

Mr. GIBBS. As you build up an advance royalty balance from the period when you're not producing the full amount of that balance then, as you start mining and earning production royalties so to speak, would go against that balance, so that if you in a year when your advance royalty say balances $2 million at the start of the year if you earn production royalties or pay production royalties of $3 million by virtue of production, then there would be no advance royalty. If you paid $1 million then there'd be another million dollars paid of advance royalty in addition to your million dollars in production royalty. Then in the future years you could recoup that. So it just depends on your production and that balance just continues to go along until it's used up.

Senator JOHNSTON. To the extent that it exceeds the 1 percent?

Mr. GIBBS. That's one way of doing it. There are a number of ways of doing it, but the one way I suggested was to say, OK, 1 percent of the coal, the amount of royalty that would be paid on that, had it been mined, would be an advance royalty. If you mine 1 percent or more then there is no advance royalty. We do this in our own leases and we find it works quite well.

Senator JOHNSTON. Let me see if I understand what you're saying. Let's say you have 3 years there in which you pay advance royalties of 1 percent and that amounts to $1 million. In your fourth year you mine the 1 percent and pay your production royalty. Now do you get any credit against anything for that?

Mr. GIBBS. Yes, sir; you are credited. What happens at the end of that year then, when you start your mining at that year you have 3 years balance of advance royalty of 1 percent. You mine 1 year of that 1 percent and what happens in effect you really don't pay any royalties that year. You're using up your balance.

Senator JOHNSTON. You don't pay that year because you're in production.

Mr. GIBBS. You're meeting your diligence requirement.

Senator JOHNSTON. But you don't get back any of that.

Mr. GIBBS. You earn against that, yes Sir. If you had mined, you have to pay at least 1 percent. Let's say that year you mined 2 percent. You'd pay your 1 percent which is your production royalty but the other 1 percent would go against your balance and you would not actually put out that money.

Senator JOHNSTON. My hypothetical was that you paid for 3 years at 1 percent. You pay that to the Government and then your fourth year you come in and you mine only 1 percent which is the minimum necessary.

Mr. GIBBS. Yes, I know what you're saying. In that case you paid your 1 percent, and your 3 percent would still be a balance. But if you mine more than the 1 percent that year you would not have paid more than 1 percent. That's exactly correct.

Mr. HARDIN. May I comment about that? I'd like to say our ad hoc coal committee would be pleased to address that question. A number of ways it can be addressed other than the way it's being indicated by Mr. Gibbs. We'd be pleased to do that.

As you have heard, we are in favor of the concept. At this point we can't recommend a particular method. I think that's something we'd like to study and respond to your question.

Senator JOHNSTON. I'd also like to submit to you those proposed ideas on alternatives.

Mr. HARDIN. We'd be pleased to comment on those as well.

Senator JOHNSTON. Now, on the Logical Mining Unit issue, in 1982 the USGS submitted new rules that redefined LMU, and reading from the description:

> Leases will no longer be designated as LMU's automatically, either by administrative or upon lease issuance. The redefined LMU allows coal methods that are interrupted by burn lines or other such legal separations as rights of way to be included in one LMU, thus insuring that a single operation could mine all portions of the recoverable coal reserves because more coal can be included in the LMU.

In other words the new, that is the 1982 rules on an LMU, seem to take care of the problem of contiguity. What more do you want than the present 1982 regulations?

Mr. HARDIN. I think we would be pleased with the deletion.

Senator Johnston. Why? What more do you need than you've got in the present regulations?

Mr. Hardin. As you've indicated the reason we'd like to be able to pull together more mining operations, several units or parcels of coal that we may not be able to under the current regulations which require that they be contiguous. We would like the flexibility to provide those tracts in one operation so they can be mined efficiently. It makes sense from a mining point of view.

Senator Johnston. Well I thought that the present regulations have taken care of that problem of contiguity.

Mr. Hardin. It's my understanding they must be contiguous now. They would not have to be contiguous as proposed in the bill before you. As of now they have to be contiguous. That's my understanding.

Senator Johnston. I think they can be interrupted by burn line or legal separations such as rights of way. What more do you need?

Mr. Hardin. The parcels may be some distance apart. They may be a quarter of a mile apart, there may be a feed track, maybe two Federal coal leases separated by a distance other than a legal subdivision or a right of way. We're asking for more flexibility.

Mr. Gibbs. I think they can be there as long as it's under a single operator in a general area and a single mine. You might have a central loadout facility and several pracels feeding into that loadout and they are not necessarily contiguous. They might be half a section or more apart. I think that's what we're concerned about.

Senator Johnston. You've got different mines in different parts of the world. How do you want to define it?

Mr. Gibbs. I think a single oeprator and perhaps a single mine.

Mr. Hardin. Single mine, single operator. Operations could be pulled by one operation. Our viewpoint is that one operation, not combined requirements from one county to the next.

Senator Johnston. What do you mean by an operator?

Mr. Hardin. That term is a person who may be operating several tracts within a mining area in the most efficient way that he can.

Senator Johnston. One operator would be Rocky Mountain Energy where they own mines?

Mr. Gibbs. No.

Senator Johnston. Well, then, tell me, what is it?

Mr. Gibbs. What we know as a single mine for instance in the West, a mine will have several pits or several surface areas that are open and many of these are not contiguous but they're known as one mine. They're under one manager, they're under one entity. I don't know how to define it any better.

Senator Wallop. I don't think they're talking statewide. I think Mr. Gibbs' statement was the same general area.

Mr. Gibbs. There may be better words than that. It's not one seam.

Senator Johnston. So the coal is separated and the mines are separated?

Mr. Gibbs. For instance in one of our mines we have like 15 separate pits but it's all one mine.

Mr. Hardin. Maybe one rail spur may serve the mine area. That's what we have in mind. It could be several different tracts that we're operating on but they all go to a common loadout or a common wash facility, a common rail spur for shipping. That's what I mean by one operation.

Senator JOHNSTON. If we took your concept of a single operation it would greatly facilitate your ability to meet the diligent development production requirements, would it not?

Mr. GIBBS. Yes.

Mr. HARDIN. Yes.

Senator JOHNSTON. You could take one of these pits and operate it and hold the production from everything else.

Mr. GIBBS. That's correct.

Senator JOHNSTON. My first impression is that that goes too far.

Mr. HARDIN. I wish we had some maps to show you a typical mining operation. I think it would make some sense.

Senator JOHNSTON. I wish you would respond to that in writing.

Senator WALLOP. One observation, it solves one side of the question, that's the Government's desire for diligence. But the other side of it is that the States may be getting money at a time when they don't have the impact from the mining operation, the requirement for schools, highways and other accesses and things which they would have to do, and conceivably this could present pretty grave problems in certain counties. In my State, where, if all the miners come in in 10 years advance of the requirements and the Government is not known for its 10 year vision, and clearly not for their 1 year vision. I think it solves one side of the issue. I'm not certain it doesn't create a problem that would be difficult on the other side of the issue.

Mr. HARDIN. I think it's probably more in response to the situation. If we could not seek and be successful in the repeal of section 3.

Senator WALLOP. I understand that. I appreciate the forthrightness with which you are addressing the problem.

Thank you.

Senator WARNER. Gentlemen, we thank you. We'll now proceed to panel No. 2. Richard Holsten, Jr., president, the Pittsburg & Midway Coal Mining Co., Denver; Bobby Brown, president, Consolidation Coal Co., Pittsburgh, Pa.; Curtis Foster, general manager, West Elk Coal Co., Somerset, Colo.; Charles K. McArthur, senio vice president, Utah International, Inc., San Francisco, Calif.

STATEMENT OF RICHARD M. HOLSTEN, PRESIDENT, PITTSBURG & MIDWAY COAL MINING CO., DENVER, COLO.

Mr. HOLSTEN. I plan to lead off with some general remarks, and with Mr. McArthur on my right will discuss several specific problems that we coal operators face with section 3 and in particular the question of competitive impact of section 3. And in the hall, and that perhaps is an appropriate place for my national league colleague from Pittsburg this week will be Bobby Brown, and Mr. Brown will address two of the often-heard objections to the repeal of section 3, that is what happens with the pre-1976 leases relative to diligent development in environmental safeguards.

Each one of us are major coal producers. We have extensive coal operations on Federal lands in the West as well as in the southern Appalachian region. We have operations nationwide and in the case of Mr. Brown in Canada and in the case of Mr. McArthur in Australia.

At the onset let me say that we strongly support S. 1634, both from the standpoint of our own companies and as representatives here of the National Coal Association and the American Mining Congress.

I'm pleased to know Senator Wallop, that a number of your committee members support the bill, as do the entire delegations from the great coal producing States of Wyoming, Utah, and New Mexico. The States of course have a vital interest in these Federal activities.

In thinking about 1634, it would appear to us that many may believe this is a relatively minor bill. I would respectfully submit that failure to repeal section 3 would have not just local impact, long-term local impact that is on the basic structure of the coal industry in the West, but more importantly failure to repeal section 3 would have strongly adverse national impact in the form of reduced competition, higher coal costs nationwide, and higher energy costs. In addition, failure to repeal section 3 would very easily impact the orderly development of other domestic energy and mineral resources that are essential to the country's economic and strategic futures.

And finally, failure to repeal section 3 would result in significantly reduced Federal interest and loss of income in those States directly involved in the development of Federal energy mineral resources.

The section 3 repeal is not just a local issue or a regional issue or a geographic issue, not is it just a technical change. Rather section 3 is of national concern. It's a consumer issue, a pocketbook issue. Wherein all of us taxpayers and ratepayers that are State governments as well as energy producers stand to lose what remains on the books.

Mr. Chairman, in deliberating on 1634, I would ask the committee to consider four related and relevant points. First is the essential role of western coal which really by definition means Federal coal, to this country's energy balance and the fact of the importance of this western coal can only increase in the future.

Western coal today represents over 30 percent of the Nation's coal production and this figure is going to grow to 40 percent or more by the end of the decade. However, a key to the orderly development of this resource lies in your hands and the hands of the Federal Government which either owns outright or effectively controls better than 80 percent of all western coal reserves.

A second point relates to competition. Within the coal industry and the fact that it is by maximizing the amount of Federal coal under lease that the Government would not only issue a head to head competition within the coal industry, and we all welcome competition. Head to head competition gives the lowest possible energy cost to the consumer, but in addition the consumer would also be protected against unnecessary price raises should the future demand for coal be even greater than we now anticipate.

Third, with regard to coal production from existing Federal leases, for any number of valid reasons, but primarily relating to changes in the marketplace, and some of these reasons were earlier enumerated by Mr. Hardin. Over the past few years much of that presently under lease simply cannot be produced by the 1986 deadline established by section 3. The requirements of section 3 therefore will have a harsh and unwarranted impact, one that was neither contemplated nor intended by the 1976 act, not just on the majority of western coal lessees including most of the major coal producers but also on many oil and gas producers, oil shale developers, hot ash and phosphate miners and many others in the mineral business. I ask, what other mineral has such onerous sanctions associated with its development?

And finally, primary if not principle objective of the 1976 act has already been accomplished, namely the elimination of the land speculator. Now it's the legitimate producers, Mr. Brown, Mr. McArthur, myself among them, that are being threatened by section 3, and most certainly this was not the intent of Congress in 1976.

You've already heard from Mr. Perry on the study that's commissioned by the National Coal Association in order to better understand the policy and economic implications of section 3. I won't repeat it here but Mr. Perry's findings do substantiate these concerns of the coal industry.

In summary, the Federal Coal Leasing Act amendments has accomplished what it was intended for, that is to eliminate the speculator, and what remains now is the negative impact of section 3 on the very companies it was meant to foster, namely the coal producers who are now diligently attempting to bring their leases into production but who for purely market reasons beyond their reasonable control, cannot be in production by August 1986.

In maintaining the provisions of section 3, will hurt not only the companies it was intended to help, but will create an anticompetitive situation that will not be in the best interest of the Government, the consumer, or the Nation's energy producers.

Let me now as my colleague from San Francisco, Mr. McArthur to discuss from his managerial perspective and based upon his own operating experience, why so many of the pre-1976 leases are not in production and then what in his judgment are the nationwide competitive impacts of section 3 on the coal industry.

Senator WALLOP. May I interject? I'd make an observation from your testimony that the orderly development of resources, should the demand be higher or even if the demand is as high as projected with the current moratorium, which has lasted a decade, this plus the effect of section 3 would be devastating. We don't know yet, as we mentioned earlier, what our amendments are going to say. There are some environmental groups which represent opposition to the Hampshire project in Gillette, their bottom line was that there wouldn't be any synthetic fuel production there—period. It's pretty hard to get in production if you have that kind of opposition. The bottom line is you shouldn't be, and it would be diligent under those circumstances, just beyond the capability of any foreseeable diligence on the part of an operator.

I observed that in your testimony.

Mr. HOLSTEN. That is a concern of those of us whose primary responsibility in the company is planning for the future.

STATEMENT OF CHARLES McARTHUR, SENIOR VICE PRESIDENT, UTAH INTERNATIONAL, INC., SAN FRANCISCO, CALIF.

Mr. **McArthur**. Mr. Chairman, in the interest of time and to avoid repetition, I'll only comment on two points. Why haven't these leases we're discussing been developed?

Mr. Chairman, I believe the first question diverts a question from the truly significant revolution that has taken place in the West over the last 10 to 15 years since these leases were issued.

Senator **Wallop**. Mr. McArthur, we have a second set of bells and I'm going to ask your indulgence and ask the committee to stand in recess until his return. I'm not going to be able to make it if I don't go now.

[Whereupon, a brief recess was taken.]

Senator **Warner**. The Chair wishes to express its apology to the witnesses and others in attendance. Being familiar with the procedures here I'm sure you know we do the best we can to keep on going with the hearings.

We'll now continue, as I understand Mr. McArthur you were delivering your prepared comments.

Mr. **McArthur**. I had just barely begun, Mr. Chairman. And in the interest of time I was only going to comment on two points.

The first point I'd like to talk about is why haven't these leases that we're discussing been developed? I believe this first question diverts attention from the truly significant revolution that has taken place over the last 10 to 15 years since these leases were issued.

In this time an entire industry has been born. In 1970 western coal production was around 35 million tons per year. By 1982 that number had grown to over 250 million tons annually, over 30 percent of the total U.S. production. By 1990 western production is expected to amount to 40 percent of our national coal production and probably be on the order of 400 million tons annually.

The key to this growth in our industry has been the availability of an adequate base in the Federal coal leases, leases that were issued in the 1960's by the then Secretary of Interior, Stewart Udall. It is this lease base, the roughly 16 billion tons of coal leased prior to 1976 that is directly threatened by section 3. A majority of the existing leases are unlikely to make the 1986 production deadline.

In departing from my text for a moment, Mr. Chairman, it seems to me after what I've heard this morning and looking at our own position as a company, if you don't have your coal mine under construction at the present time, you can consider your leases as having failed to meet this criteria because it takes 2 to 3 years to put a big coal mine into production, so we have an immediate crisis. Perhaps that's understated. We may have already gone by the mark as required by section 3. And incidentally, I know of very very few large coal mines under development in the Western United States. We're there.

Senator **Warner**. We'll let Mr. Brown speak to the East. If we're outdistancing you in that area. Are we Mr. Brown?

Mr. **Brown**. Yes.

Mr. McArthur. There are many reasons why a pre-1976 lease may not have been developed. But I would like to talk very briefly on how time consuming and difficult it is to put a big mine into production.

My own company for instance spent over 20 years finding a buyer for the coal from our Trapper Mine in northwestern Colorado. It isn't just a case of finding a customer and throwing in some trucks and shovels or a dragline. We had to develop water, something not easily done in the West. We had to provide a powerplant site for the utility that was suitable for their purposes, we had to tie in State leases and private coal to make it continuous mining mass. We had to deal with the surface owners and satisfy their price for the surface lying over the coal, and we then had to proceed to get some 80 permits to allow us to go into production.

And at this site it took well over 20 years. We have other leases in which we are plodding along trying to perform exactly the same task and we have been at it for some 20 years.

You no doubt will hear in testimony today some people say well these big companies simply want to sit on its reserves. Let me tell you that's not true. We are in the budget process now in my company for 1984, and we will be budgeting somewhere between $5 and $7 million for development programs on our Federal coal leases. This is mostly preengineering studies for the mine plan and time consuming, environmental studies to meet the requirements of the Surface Mining Act and other Federal regulations. We are not sitting idly and we are definitely putting development money into these leases.

A study I think that Mr. Holsten referred to and other speakers have referred to that indicates a minimum of 7 to 10 years for the development of a large western coal mine, I would say understates the case. It may be more like 12 to 15 years.

I don't believe that I will comment further on the analysis of Mr. Perry's statement which I think sums up rather well the anticompetitive nature of the end result of not repealing section 3. I would like to just say that what he said makes sense to me and we agree with his conclusion.

For those companies most capable of bidding on new coal leases to be ruled out of the game would not be in the best interest of the United States in any way that I can possibly see. We are the companies that have developed the mine, we are the ones that can do it in the future. And coal, which is certainly one of our best hopes for reduced dependency on imported energy, can be best mined and best put into production by the very people that the failure to repeal section 3 will rule out. There's no question about it that our company, if this repeal is not in place, will simply not bid on further Federal coal.

Thank you.

Senator Warner. Thank you.

STATEMENT OF B. R. "BOBBY" BROWN, CHAIRMAN AND CHIEF EXECUTIVE OFFICER, CONSOLIDATION COAL CO., PITTSBURGH, PA.

Mr. BROWN. Mr. Chairman, my name is Bobby Brown. I'm chairman and chief executive officer of Consolidation Coal Co.

We have extensive operations in both the East and the West and hold a number of Federal leases. I would like to discuss two main objections that have been raised against the repeal of section 3.

The first is that pre-1976 leases, the section 3 leases are somehow not subject to the environmental scrutiny of leases issued after passage of the 1976 Federal Coal Leasing Amendments Act which among other things mandates Interior to do extensive land use planning prior to issuing a lease. The fact is that pre-1976 leases may meet the same rigorous environmental safeguards as all other Federal coal leases.

Let me note briefly what some of the more important environmental production protections are. The Surface Mining Control and Reclamation Act of 1977 requires that all mines on Federal lands must submit mining and reclamation plans that are approved as part of a larger permit to mine on those lands. In addition to the permitting requirements set forth in SMCRA, and the implementing regulations, there are extensive environmental performance standards that are applicable to all surface mining and reclamation operations on Federal lands. Those standards insure that all mining operations are conducted in an environmentally sound manner and address such areas as hydrology, sedimentology, geology, fish and wild life, top soil, revegetation, approximate original contour, air quality, and postmining land use. Because the approval of mining and reclamation plans for a proposed mine on Federal lands is considered a Federal action within the meaning of NEPA, the National Environmental Policy Act, an environmental statement will almost invariably have to be prepared. This is the case even where a State approves the permit for mining on Federal lands pursuant to a Federal-State cooperative agreement.

Operators on Federal lands are required to comply with the requirements of the Clean Water Act, the Clean Air Act, the Endangered Species Act, and the various archeological and historical preservation acts.

Many States have their own statutes and regulations governing mining operations within their borders which they enforce pursuant to the States' rule under cooperative agreements. The Secretary, however, continues to satisfy his responsibility to insure the environmental protection of Federal lands through two distinct mechanisms. One, the approval of the resource recovery and protection plan by the Bureau of Land Management, and two, the approval by OSM of State-Federal cooperative agreements for the regulation of surface mining on Federal lands.

There is little doubt that these processes should disclose all reasonably foreseeable environmental problems so that corrective action can be taken by the Secretary. If for example after the coal leasing process has been concluded as is the case with all pre-1976 leases, an endangered species was found in a proposed permit area covering Federal land, the Secretary retains the authority under the Endangered Species Act, to protect such wildlife. Thus, as a part of the Secretary's mining plan approval, he will review the Federal land in question pursuant to the requirements of the Mineral Leasing Act as amended. The Federal Land Policy and Management Act and the Endangered Species Act and NEPA.

Finally, the areas unsuitable requirements of SMCRA continue to apply to all Federal lands. This procedure allows a person to petition to have certain Federal lands declared as unsuitable for mining and automatically prohibits mining in certain areas such as in national parks and within 300 feet of dwellings.

In sum, given the number of environmental safeguards built into the present statutory and regulatory systems of both Federal and State Governments, there is little cause for concern that the preleasing act leases will escape any less environmental scrutiny than those leases issued after FICA was enacted.

Mr. Chairman, a final concern that has been raised is if section 3 is repealed the pre-1976 leases will be removed from strict diligent development requirements that apply to newer leases. To explain why this is not so, let me briefly review section 3 in the context of the 1976 act and subsequent steps by the Interior Department in imposing diligence on the leases.

The 1976 act in part, responding to concerns about speculation legislatively strengthened diligent development requirements in two ways. First, leases issued subsequent to the act were required to be producing in commercial quantities at the end of 10 years after the issuance.

Second, section 3 was aimed at existing leases and was added to prohibit those lessees who held nonproducing leases for 10 years or more from the date of enactment which was 1976 from obtaining any more leases under the Mineral Leasing Act of 1920. At virtually the same time in 1976, the Interior Department independently promulgated rules requiring all existing leases to be in production within 10 years or they would be subject to cancellation. However it was subsequently determined that retroactively applying the 10 year diligence requirement to leases issued prior to enactment was unenforceable and perhaps unconstitutional. Since this new condition materially changed the economic terms of the lease agreement in a manner not provided for in the document. Hence the diligence regulations for pre-1976 leases were amended in 1982 to apply the 10 year development requirement and readjustment. Pre-1976 leases were issued for an initial period of 20 years at which point and every 10th year thereafter they were subject to adjustment of terms.

The irony is that lessees holding pre-1976 leases may hold those leases beyond 1986 or until the 10th year after their normal readjustment date in full compliance with the requirement for diligent development.

However, under section 3 of FCLAA these lessees must relinquish all undeveloped leases even though such leases are in compliance with diligence or they are barred from obtaining any new leases of oil, gas, coal, or any other leasable mineral.

As a practical matter, Mr. Chairman, the vast majority of the pre-1976 leases will have been readjusted by the mideighties and will be facing the same 10-year clock as newer leases.

For example, by 1986 60 percent of the leases will have been readjusted. By 1987, 80 percent will have been. Virtually every pre-1976 lease will have been in production by the year 2000. I think you'll agree with me that repealing section 3 from the deligent development perspective simply removes an inconsistent and inappropriate requirement cf law and in no way is a weakening of diligent development requirements on coal leases.

Mr. Chairman, I would like to close on behalf of my colleagues by thanking you for consideration of this legislation today and by also making a special plea for quick action on this legislation. People have asked why section 3 repeal can't be dealt with next year or the next, since it doesn't trigger until 1986. To those of us in the energy and mineral development business, Mr. Chairman, 1986 is today.

Again, on behalf of Mr. Holsten, Mr. McArthur and myself, I thank you for your time and particularly I would like to thank Senator Wallop and his colleagues who sponsored S. 1649.

[The prepared statement of Messrs. Holsten, McArthur and Brown follows:]

NATIONAL COAL ASSOCIATION

STATEMENTS OF
RICHARD M. HOLSTEN
PRESIDENT
PITTSBURG AND MIDWAY COAL COMPANY

CHARLES McARTHUR
SENIOR VICE PRESIDENT
UTAH INTERNATIONAL

B. R. "BOBBY" BROWN
CHAIRMAN AND CHIEF EXECUTIVE OFFICER
CONSOLIDATION COAL COMPANY

on behalf of
THE NATIONAL COAL ASSOCIATION
and
THE AMERICAN MINING CONGRESS

BEFORE THE
U. S. SENATE
SUBCOMMITEE ON
ENERGY AND MINERAL RESOURCES
of the
COMMITTEE ON ENERGY AND NATURAL RESOURCES

WASHINGTON, D.C.
October 18, 1983

Mr. Chairman, my name is Richard Holsten, and I am President of Pittsburg and Midway Coal Company, a subsidiary of Gulf Oil, with headquarters in Denver. Joining me today is Charles McArthur, Senior Vice President of Utah International, a mining company based in San Francisco, and B. R. "Bobby" Brown, Chairman and Chief Executive Officer of Consolidation Coal Company, Pittsburgh, a unit of Dupont and Conoco. Each of these companies have extensive operations from Federal coal leases as well as operations nation-wide. We are appearing on behalf of the National Coal Association and the American Mining Congress.

Let me state at the outset that the coal and mining industry strongly supports S.1634, which would repeal Section 3 of the Federal Coal Leasing Amendments Act of 1976, (FCLAA)and make two long overdue technical changes to that act which we will not elaborate on now but which are covered in our written testimony.

Today, I would like to outline the major reasons why Section 3 should be repealed.

Mr. MacArthur will discuss why a majority of the nation's developers of Federal coal reserves face a Section 3 problem and what some of the competitive impacts of failure to repeal Section 3 are.

Mr. Brown will address the issue of environmental safeguards and diligent development requirements on federal leases if Section 3 is repealed, two issues which we believe to be the major objections to repeal of Section 3.

Not only does the coal industry support S.1634, but I am pleased to note that several members of this subcommittee also support Senator Wallop's bill to repeal Section 3, as well as the entire Senatorial delegations from Wyoming, Utah and New Mexico, three states with a vital interest in coal production from Federal leases.

S.1634 may appear to be a relatively minor bill before this committee. However, upon reflection, I think you will come to agree with me that Section 3 repeal is one of the most important items that this committee will be called upon to deal with. Failure to repeal Section 3 will have enormous and lasting impacts not only on the structure of the Western coal industry and subsequent nation-wide costs of coal, but also on the orderly development of other domestic energy and mineral supplies that are essential to this country's economic and strategic future.

Failure to repeal Section 3 will also result in large negative impacts on Federal revenues and the income of those states most directly involved in the development of Federal energy and mineral resources. Currently, over $1.4 billion in onshore mineral receipts flows annually to the Federal government and the states.

But ultimately, Section 3 repeal is a consumer issue in that failure to repeal it will ultimately decrease competition in the coal industry and raise costs, which will be reflected in the nation's energy bills. Section 3 repeal is not a mere regional issue, nor is it a technical change making it easier to mine Federal coal — everyone stands to lose if it stays on the books.

Mr. Chairman, I ask the committee to consider two key points.

First, Western coal is essential to this country's energy balance and its importance can only increase in the future. Currently, Western coal supplies over 30 percent of this country's coal production and that number is expected to reach 40% by 1990. The key to developing these reserves is in the hands of the Federal government, which either owns outright or controls over 80% of the coal.

Second, by maximizing the amount of coal under lease, the government will not only assure head-to-head competition among coal producers, and thus the lowest possible energy costs to the consumer, but equally important, by ensuring an adequate inventory of undeveloped coal leases for the future, the consumer will be protected against unnecessary price rises should the demand for coal be even greater than now anticipated.

S.1634 repeals Section 3 of the 1976 Federal Coal Leasing Amendments Act, which says in essence that the Secretary of the Interior cannot issue a lease for any mineral under the Mineral Lands Leasing Act to a lessee who holds or has held a coal lease for 10 years after enactment of the FCLAA (August 4, 1986) without producing coal in commercial quantities. In addition to coal, this includes onshore oil and gas, phosphate, potash, oil shale, etc.

For any number of valid reasons, but primarily relating to the market place for Western coal production, much of the coal presently under lease will not be produced — cannot be produced — by the 1986 deadline. The requirements of Section 3 therefore will have a harsh and unwarranted impact, one that was neither contemplated nor intended by the 1976 Act, not just on a majority of Western coal lessees including many of the major coal producers in the country, but also on many oil and gas producers, oil shale developers, hard rock miners, potash and phosphate producers and many other in the minerals business. No other mineral has such onerous sanctions associated with its development.

The companies are faced with a "Hobson's Choice," none of which today is realistic: either give up all non-producing coal leases in order to continue to participate in future Federal mineral leasing programs; keep the leases and wait until they can be developed at some indefinite time in the future but, in the meantime, be barred from all other leasing activity; or try to sell the leases realizing this will be difficult at best because the most likely buyers will also be similar Federal leaseholders.

Section 3 appears to have been aimed to exclude "speculators," that small group of individuals who in the '50s and '60s were able to selectively accumulate fairly substantial Federal coal holdings without much capital investment. Section 3 was meant to force production or abandonment of these leases by hitting the speculator where it hurt — denial of lease acquisition — and in this regard FCLAA has been one of the more successful pieces of legislation. The coal lease speculator is gone. But now it is the legitimate producer who is being threatened and that most certainly was not the intent of Congress in 1976. Indeed, the irony is that the speculator is not hurt by Section 3, since he does not need access to new coal, oil and gas or other mineral leases to stay in business.

In order to better understand the policy and economic implications of Section 3, the National Coal Association commissioned an independent study by Harry Perry, a respected mineral economist associated with Resources for the Future Institute in Washington. The major conclusions of that study are worth sharing.

First, the "speculator" has disappeared from the leasing market. The data clearly shows from 1970 to 1980 lease ownership passed from land holding companies and small independent producers to energy and mineral companies who have the financial and technical capability to develop the coal. Furthermore, production from these leases now in operation indicate current leaseholders will produce on these leases just as quickly as the market will allow. In fact, between 1970 and 1979, as capable producers took over control of Federal leases, there was a 20 fold increase in Federal coal production.

Second, the reason why many of these leases will not make the 1986 production deadline is that the market for this coal simply has not developed fast enough to absorb this production. Although Western coal is projected to increase rapidly, the market will not "clear" by 1986. In fact, the equilibrium of the Western coal market would be severely disrupted if Section 3 is implemented to force more production than the market can absorb at that time.

Third, because of the either/or choice required by Section 3, competition is going to be reduced one way or the other. Either there will be reduced bidding competition in the future — not only in coal leasing but also in oil and gas as well as other minerals covered by the 1920 Act — or if such a large number of existing leases revert to the government, there will be an inadequate inventory of engineered coal properties available to meet market demands in an efficient and timely manner.

The study is quite explicit in analyzing the competitive leasing activities of companies affected by Section 3:

- In coal, 20 of the 32 Federal leases issued since the moratorium have been awarded to Section 3 companies.

- In oil and gas, they were active bidders in at least 20 of the 35 onshore oil and gas lease sales analyzed.

- They were the high bidders on 6 of 8 other sales involving copper, potash, phosphate, sodium and uranium.

- And in oil shale, 7 of the 8 bidders capable of developing this huge energy resource were Section 3 holders.

The analysis concludes that Section 3 leaseholders are the key to maintaining effective competition in the lease sales of Federal resources and that Federal and state revenues will be greatly reduced through the elimination of competition for these resources.

In summary then, FCLAA has accomplished what it was intended for -- namely, elimination of speculators. What remains now is the negative impact of Section 3 on the very companies it was meant to foster, the coal producers who are diligently attempting to bring these leases into production to meet the nation's growing energy needs but who simply cannot be in production by August 1986. To maintain the provisions of Section 3 will hurt not merely the companies it was intended to help but would create an anti-competitive situation that would not be in the best interest of the government, the consumer or the nation's energy producers. What is needed is more, not less competition, which will inevitably be the result of Section 3.

Let me turn to my colleague Charles McArthur who will discuss in a little more detail the question of why many of these so-called "pre-1976" leases are not in production and what competitive impacts Section 3 is likely to have on the coal industry.

Thank you Dick and Mr. Chairman. My name is Charles McArthur and I am Senior Vice President for Western Hemisphere Operations, Utah International, in San Francisco. We have extensive operations in the west as well as production in the eastern U. S.

I would like to discuss a couple of obvious questions that have been raised with regard to Section 3 repeal. First, why haven't these leases been developed, especially since they were issued in the 1960's?

Second, if they can't be developed in the near term, why shouldn't they be turned back to the government?

Mr. Chairman, I believe that the first question diverts attention from the truly significant revolution that has taken place in the West over the 10 to 15 years since these leases were issued and that is that an entire industry was born. In 1970, western coal production was around 35 million tons per year. By 1982, that number had grown to over a quarter billion tons, -- over thirty percent of total U. S. production -- and by 1990 western production is expected to amount to 40% of total output.

A series of small operations serving local needs in 1970 has been replaced by a highly productive, low cost, competitive Western coal industry serving utilities in both the West and midwest as well as export markets. The key to the growth of that industry has been the availability of an adequate base of Federal coal leases, leases that were issued in the 1960's by then Secretary Stewart Udall. For example, in 1979, 85% of the production in the seven western states with the largest Federal coal reserves came from mines whose logical mining units include a Federal lease.

It is this lease base — the roughly 16 billion tons of coal leased prior to the 1976 Coal Leasing Amendments Act — that is directly threatened by Section 3. A majority of the existing leases are unlikely to make the 1986 production deadline. It was recognized in 1976 that the provision requiring production from these leases in 10 years was totally arbitrary and bore little relationship with the real world of mining and marketing large coal reserves.

There are many reasons why a pre-1976 lease will not meet the 1986 deadline, but the major factor has to do with the time consuming and unpredictable task of finding a market — tying down a contract — before serious development begins at the mine site. My company, for instance, spent over 20 years finding a buyer for the coal from our Trapper mine in Colorado. In addition, energy growth projections have fallen in recent years — energy conservation, the recession, perhaps even a basic change in our industrialized society — and coal production plans have been adjusted correspondingly. Assuming a customer has been found, then add to this the time required to obtain the necessary permits, financing, and development, and it is not surprising that a large number of these leases will not meet the deadline. The study referred to by Mr. Holsten earlier points out that a minimum of seven to ten years is required to develop a new large Western coal mine, if there are no unpredictable delays in the mine development stage. In many cases, industry experinence has shown that it can take upwards of twelve years. So unless a lease is now well into the mine development stage, there is no way it can reach commercial production by August 1986.

Some of this coal will never enter the market — it is simply not competitive or development plans will not be able to pass the rigid environmental tests that are required in mine permitting today. Those leases will revert back to the government in accordance with the strict diligent development requirements that apply to these leases, an important point that Mr. Brown will elaborate on later. The remaining leases will eventually be produced as the western coal market continues to develop, but in the meantime — and I believe this is the important policy consideration — the existence of a large number of leases available to be developed is the factor that will assure maximum head-to-head competition in coal sales and the lowest possible costs to utilities and other customers.

This brings us to the second question — what's wrong with a large number of these leases being turned back to the government? It is this question that raises particularly important implications for both energy policy in particular and industrial policy in general.

The Justice Department, the Interior Department, independent economists and industry experts are in unanimous agreement that competition in the sale of Western coal is proportional to the number of leases available to be developed, an obvious but often overlooked fact. There are major differences among individual owners of pre-1976 leases and the impacts Section 3 will have on their corporate operations depending upon their mineral holdings and areas of business emphasis. However, it is virtually certain that a great number of existing non-producing coal leases are likely to be forced into relinquishment between now and 1986.

What will be the impact on competition in this event? Further analysis of Mr. Perry's data, referred to earlier, provides a quantitative assessment of what the impacts of Section 3 will be on one important barometer of competition in the coal industry. That is, the number of coal companies bidding to supply coal to utilities. Let me share the results of that analysis with you.

First Mr. Perry divided owners of existing non-producing coal leases into three groups:

Group 1 are those with substantial reasons to favor relinquishment of leases subject to Section 3. This includes energy companies, independent coal companies, natural gas pipeline companies, etc.

Group 2 are those with somewhat less compelling reasons for relinquishment, such as electric utilities, steel companies, etc.

Group 3 are those with little or no reason to relinquish their leases, primarily unincorporated individuals, leaseholding companies, etc.

Next, the analysis shows that to assure 4 bidders per contract for the coal required by the utilities for just the 1981-91 period, there is currently barely enough coal in existing Federal leases to supply the demand for only 10 years if none of the currently held leases were relinquished. If all Group 1 leases were relinquished, on the average only about 3 bidders per coal contract would be available to supply only 10 years of coal demand; if Group 1 and 2 leases were relinquished, fewer than 2 bidders per contract would be available for these same 10 years of coal demand. In other words, Section 3 has the distinct possibility of effectively destroying competition in the sale of Western coal.

The analysis is quite conservative in that the maximum amount of Federal coal was assumed to be available, no demand for coal for other uses was included, and only a 10 year demand interval was assumed, a much shorter period than either a perspective buyer or seller would normally feel to be adequate.

In fact, both coal producers and utility consumers have a much longer planning period than 10 years. Producers normally need an assured supply of 30 to 50 years of coal reserves in order to recapture their capital investments, and utilities seek longer term contracts since they can achieve significant operating economies if they are able to design their boilers for a long term supply of coal with relatively constant physical properties.

The analysis concludes that competition for coal from Federal leases would be seriously reduced in the next 10 years (1993) if Section 3 leaseholders find it in their best interests to relinquish their leases. In addition, with the long delays in preparing lease offerings, the extended period required to bring a large new western coal mine into production and the steadily increasing demand projected for western coals by the utilities alone suggests competition would continue to be weak for some years beyond 1993.

Mr. Chairman, I hope you will agree with me that the serious impacts of Section 3 are clearly not in the public interest and are inimical to orderly development of this country's industrial base.

Mr. Brown will now discuss two additional concerns that have been raised with Section 3 repeal.

Thank you Mack. Mr. Chairman, my name is Bobby Brown. I am Chairman and Chief Executive Officer of Consolidation Coal Company. We have extensive operations in both the east and west and hold a number of Federal coal leases. I would like to discuss two main objections that have been raised against repeal of Section 3.

The first is that pre-1976 leases--the "Section 3" leases-- are some how not subject to the environmental scrutiny of leases issued after passage of the 1976 Federal Coal Leasing Amendments Act, which, among other things, mandates Interior to undergo extensive land use plannning during the leasing process and prior to issuing a lease.

A lease is simply a realty agreement between two parties. It confers no rights that make it easier to meet environmental protection standards. The fact is that pre-FCLAA leases must meet the same rigorous environmental safeguards as all other Federal coal leases. And the extensiveness of those requirements is indeed staggering.

In testimony presented before this committee last year on S.2704 (a bill similar to that at issue), we submitted a chart for the record that was prepared by Mr. James R. Jones of Peabody Coal Company that illustrates the various steps entailed in bringing a mine into production. Some of the critical steps on that chart focus on environmental and related studies (which incidentally can take from 9-14 years to complete), the NEPA process, and the permitting stage. Every mine, regardless of the type of lease it is operating under, must comply with these steps. It is as a result of this mandatory process that all leases -- including pre-FCLAA leases -- are subject to significant environmental protection.

Let me note briefly what some of the more important environmental protections are:

- The Surface Mining Control and Reclamation Act of 1977 (SMCRA) requires that all mines on Federal lands must submit a mining and reclamation plan that is approved as part of a larger permit to mine on those lands. The informational and environmental baseline study requirements for the mining and reclamation plan are extensive and can require between three and six years of preparation. We will not detail those requirements here but suffice it to note that the applicable Office of Surface Mining (OSM) regulations encompass some 17 three-column pages in the Federal Register.

- In addition to the permitting requirements set forth in SMCRA and the implementing regulations, there are extensive environmental performance standards that are applicable to all surface mining and reclamation operations on Federal lands. Those standards insure that all mining operations are conducted in an environmentally sound manner and address such areas as hydrology, sedimentology, geology, fish and wildlife, topsoil, revegetation, approximate original contour, air quality and postmining land use.

- Because the approval of a mining and reclamation plan for a proposed mine on Federal lands is considered a "Federal action" within the meaning of NEPA, an environmental impact statement will almost invariably have to be prepared. This is the case even where a state approves the permit for mining on Federal lands pursuant to a Federal/state cooperative agreement.

- Operators on Federal lands are required to comply with the requirements of the Clean Water Act, which requires a NPDES (National Pollutant Discharge Elimination System) permit, the Clean Air Act (which requires a PSD permit in some cases), the Endangered Species Act, and the various archaeological and historic preservation acts which require intensive surveys for archaeological, historic and cultural resources and properties.

- Many states have their own statutes and regulations governing mining operations within their borders and, pursuant to the states' role under cooperative agreements, are able to exercise their authority in implementing those statutes and regulations as they impact coal operators.

Some may argue that the Interior Department has relinquished its authority to control the environmental aspects of Federal coal development under the cooperative agreement mechanism provided for under the OSM Federal Lands Program. Just the opposite is true, however. The Secretary continues to satisfy his responsibility to assure the environmental protection of Federal lands through two distinct mechanisms: 1) the approval of the Resource Recovery and Protection Plan (RRPP) by the Bureau of Land Management and 2) the approval by OSM of state/Federal cooperative agreements for the regulation of surface mining on Federal lands.

Under the former mechanism, BLM reviews an operator's reclamation schedule. Under the cooperative agreement mechanism, OSM not only approves the agreement and the underlying state regulatory program on which it is based but also continually exercises an oversight function relating to both the state program and the cooperative agreement.

In all cases, permit issuance by a state with a cooperative agreement cannot be equated with mining of leased Federal coal. Before any coal mining and reclamation operations on lands containing leased Federal coal may occur, a mining plan must be approved by the Secretary which includes both the state-approved permit and the BLM-approved RRPP. Finally, the Secretary's approval of the mining plan is reviewable in federal court.

Given all of the above, there is little doubt that these processes should disclose all reasonably foreseeable environmental problems so that corrective action can be taken by the Secretary. If, for example, after the coal leasing process had been concluded (as is the case with all pre-1976 leases) an endangered species was found in a proposed permit area covering Federal land, the Secretary retains the authority under the Endangered Species Act to protect such wildlife. Thus, as part of the Secretary's mining plan approval, he will review the Federal land in question pursuant to the requirements of the Mineral Leasing Act, as amended, the Federal Land Policy and Management Act, the Endangered Species Act, and NEPA.

Finally, the areas unsuitable requirements of SMCRA continue to apply to all Federal lands. This procedure allows a person to petition to have certain Federal lands declared as unsuitable for mining and automatically prohibits mining in certain areas such as in National parks and within 300 feet of dwellings.

In sum, given the number of environmental safeguards built into the present statutory and regulatory systems of both the Federal and state governments, there is little cause for concern that pre-FCLAA leases will escape any less environmental scrutiny than those lease issued after the FCLAA was enacted.

Mr. Chairman, a final concern that has been raised by others is that if Section 3 is repealed, the pre-1976 leases will be removed from strict diligent development requirements that apply to newer leases. To explain why this is not so, let me briefly review Section 3 in the context of the 1976 Act and subsequent steps by the Interior Department in imposing diligence on these leases.

The 1976 Act, in part responding to concerns about speculation, legislatively strengthened diligent development requirements in two ways. First, leases issued subsequent to the Act were required to be producing in commercial quantities at the end of 10 years after lease issuance. Second, Section 3 was aimed at existing leases and was added to prohibit those lessee's who had held non producing leases for 10 years or more from the date of enactment from obtaining any more leases under the Mineral Leasing Act of 1920.

At virtually the same time in 1976, the Interior Department promulgated rules requiring all existing leases to be in production within 10 years or they would be subject to cancellation. However, it was subsequently determined that retroactively applying the ten-year diligence requirement to leases issued prior to enactment was unenforceable and perhaps unconstitutional, since this new condition materially changed the economic terms of the lease agreement in a manner not provided for in the document. Hence, the diligence rules for pre-1976 leases were amended in 1982 to apply the ten-year development requirement at the time those leases were subject to readjustment of terms as provided for in the original lease agreements. Pre-1976 leases were issued for an initial period of 20 years, at which point and every tenth year thereafter they were subject to readjustment of terms.

The irony is that, lessees holding pre-1976 leases may hold those leases beyond 1986 or until the tenth year after their normal readjustment date in full compliance with the requirement for diligent development. However, under Section 3 of FCLAA, these lessees must relinguish all undeveloped leases, even though such leases are in compliance with diligence, or they are barred from obtaining any new leases of oil, gas, coal, or any other leasable mineral.

In other words, for pre-1976 leases, the Section 3 prohibition is not only a redundancy, but an apparently inconsistent and inappropriate requirement of law.

As a practical matter, Mr. Chairman, the vast majority of the pre-1976 leases will have been readjusted by the mid 1980's and will be facing the same 10 year clock as newer leases. For example, by 1986, 60% of the leases will have been readjusted; by 1987, about 80% will have been. Virtually every pre-1976 lease will have to be in production by the year 2000. I think you will agree with me that repealing Section 3, from a diligent development perspective, simply removes an inconsistent and inappropriate requirement of law and in no way is a "weakening" or "gutting" of diligent development requirements on coal leases.

Mr. Chairman, I would like to close on behalf of my colleagues by thanking you for consideration of this legislation today, but also by making a special plea for quick action on this legislation. People have asked why Section 3 repeal can't be dealt with next year or the next, since it doesn't trigger until 1986. To those of us in the energy and mineral development business, Mr. Chairman, 1986 is today. The nature of our business absolutely requires that we plan five, ten or twenty years in the future. The existence of Section 3, and the legal confusion surrounding its interpretation, makes it increasingly impossible to plan rationally for orderly development of this nation's energy and mineral resources.

Again, on behalf of Mr. Holsten and Mr. McArthur, I thank you for your time today. In particular, I would like to thank Senator Wallop and his colleagues who sponsored S.1649. We would welcome any questions.

LOGICAL MINING UNITS

The 1976 Act provided the Secretary of the Interior with the authority to unitize coal lands into "logical mining units" (LMUs) which could be developed in an orderly and economical and geologically efficient manner. An LMU may consist of federal and non-federal lands, but the statute now requires that all lands in the LMU must be contiguous, or touching. The concept of contiguity was originally intended to ensure that leases in an LMU would not be separated by great distance, so that production from one remote lease in an LMU could not be credited to other leases in the LMU to satisfy production requirements. Yet in practice, legal separations such as rights-of-way and physical separations such as oxidized or eroded areas of seams and pinch-outs, destroy contiguity. The proposed deletion of the contiguity requirement from the definition of the logical mining unit, as contained in Section 3 of S.1634, would permit the formation of LMUs in those situations where, but for the technical requirement of actual touching, it makes economic and geologic sense to mine various properties as a unit. As the definition of an LMU currently exists, however, the desired result of efficient mining may actually be frustrated by this "touching" provision.

OPERATION AND RECLAMATION PLANS

A new provision was added to the Mineral Lands Leasing Act by Section 6 of the 1976 Act, which requires the submission of an operation and reclamation plan within three years of lease issuance. The U. S. Geological Survey interprets this provision to mean the submission of a plan which demonstrates that the lessee will comply with the requirements of diligent development, maximum economic recovery and resource recovery and protection. Such a plan cannot be designed in any detail until the lessee has a major coal customer, because the plan will need to be tailored to provide for the customer's needs. The lessee may well be lucky to have his exploratory work done to define the coal deposit, and often will not have a customer within three years of lease issuance. Moreover, the requirement that the plan be sumitted within three years is superfluous in light of the detailed mining and reclamation plan which must be submitted under the SMCRA.

The amendment proposed in Section 4 of S.1634 only eliminates the three-year requirement of Section 7(c) of MLLA, as amended. The requirement that the plan be submitted for the Secretary's approval "prior to taking any action on a leasehold which might cause a significant disturbance to the environment" would remain in effect. This requirement is in addition to the permit requirements of SMCRA. There is no filing deadline for a mining and reclamation plan under SMCRA, but that plan must be submitted in order to acquire a permit before mining operations can commence. The deletion of the three-year submission deadline would permit lessees to prepare both plans on a contemporaneous basis, after the lessee knows more about his customer's requirements and, hence, about the type of mining operation he will conduct.

Status of Western Coal Reserves

Western recoverable coal reserves, where nearly all of the federal coal leases are located, total about 240 billion tons and represent approximately 55% of the total recoverable reserves on a tonnage basis of the United States. The Federal Government owns between 50 and 60% of western coal reserves of which approximately 16.5 billion tons of coal were under lease in September, 1980 and an additional 5.7 billion tons were contained in preference lease right applications (PRLA's) now under consideration by the Department of Interior.[1/] In 1981 and 1982, an additional 2.16 billion tons of coal was leased by the Department of Interior in a series of competitive lease sales.

While detailed information on reserves of coal on individual leases issued before 1980 is not available, the leases covered approximately 812,000 acres that, on average, contained 20,700 tons of coal per acre. Those 1981-1982 lease sales, for which estimates of coal reserves were available, averaged 19,500 tons per acre, indicating that average values can be used with confidence for estimating purposes.

Although there are considerable quantities of privately held coal reserves, most of the current western coal production is from federal leases or from mines which include both federal and private coal reserves. For example, in 1982 total production in the seven western states with the largest federal coal resources was 217 million tons with 108 million tons, or 50%, from mines which include a federal lease. This indicates that some of the most desirable coal reserves are federal leases and that much of the private coal resources can be produced most economically in conjunction with federally leased resources.

[1/] OTA publication "An Assessment of Development and Production Potential of Federal Coal Leases"

The Effect of Section 3 Provisions on Federally Leased Coal

The approximately 16.5 billion tons of coal leased before January 1980 and available for commercial development would be substantially reduced if the Section 3 provisions of the Federal Coal Leasing Amendments Act of 1976 became operational, as scheduled in August of 1986. Estimates of the maximum currently available reserves and those that would be available under several different assumptions are:

Estimates of
Maximum Recoverable Resources Available*
(billions of tons)

Currently Available	=	18.6
Available August 1986 (Group I leases relinquished)	=	12.9
Available August 1986 (Group I & II leases relinquished)	=	7.8

Demand for Western Coal

Actual Demand for Western U.S. Coal 1981 by Electric Utilities[1]

	U. S.	U. S. and Canada
	(thousands of tons)	
Lignite	42,798	48,849
Other Western Coal	179,354	193,839
	222,152	242,688

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* See Appendix A for assumptions and calculations.

[1] Electric Power Supply and Demand; North American Electric Reliability Council, August 1982.

Projected Demand for Western U. S. Coal 1991 by Electric Utilities[1]

	U. S	U. S. and Canada
	(thousands of tons)	
Lignite	116,013	126,266
Other Western Coal	295,880	330,432
	411,893	456,698

Estimated U. S. Coal Demand, 1981-1991 by U. S. and Canadian Utilities

= 887,221 tons (lignite) + 2,807,305 (tons other western coal)

= 3.7 billion tons

Effect on Competition of Coal From Federal Leases

The reserves required to provide competition for the estimated 3.7 billion tons of coal required by the utilities for just the 1981-1991 period, assuming 4 bidders per utility contract, would be 14.8 billion tons (4x3.7). As the reserve table above indicates there would be enough coal in federal leases to supply the demand for more than 10 years if none of the currently held leases were relinquished. If all Group I leases were relinquished, on the average only about 3 bidders per coal contract would be available to supply coal for only 10 years; if Group I and II leases were relinquished fewer than 2 bidders per contract would be available for a 10 year coal supply.

While coal on private lands would improve the competitive situation to some extent, the maximum amount of federal coal has been assumed to be available, no demand for coal for other uses has been included and only a 10 year demand interval was assumed and for the period of smallest demand by the utilities.

Both coal producers and utility consumers have a much longer planning period than 10 years. Producers normally need an assured supply of 20 to 30 years of coal reserves in order to recapture their capital investments. Utility consumers seek long term contracts since they can achieve significant operating economies if they are able to design their boilers for a long term supply of a coal with a relatively constant physical and chemical properties.

Considering all these circumstances, competition for coal from [illegible] would be seriously reduced in the next 10 years (1993) if Section 3 [illegible] their best interests to relinquish their leases. In addition, with the time [illegible] preparing lease offerings, the extended periods required to bring a large new [illegible] coal mine into production and the steadily increasing demand projected for [illegible] by the utilities alone competition would continue to be weak for some years beyond [illegible].

Appendix A

Estimates of Mineable Reserves on Federal Leases

Currently Held Leases

These leases contain about 16.5 billion tons of coal issued before September 1980 and 2.1 billion tons leased in 1981 and 1982 sales.

Total reserves = 16.5 + 2.1 = 18.6 billion tons.

This represents the maximum amount of recoverable coal. Actual recovery can be expected to be considerably less although an accurate quantitive estimate of how much less this would be is impossible to make. It is known, however, that many of the leases included in this total are too small to justify mining on the large scale needed for western coals to be competitive, some deposits are found under geological conditions that make mining uneconomical (large overburden to coal ratio, consolidated overburden, etc.) and part of the reserves may be disqualified for mining (alluvial valley floors, prime agricultural land) under the Surface Mining Control and Reclamation Act of 1977.

Leases in Effect if Section 3 becomes Operational

Owners of existing non-producing coal leases have been classified into three groups, into each of which are placed companies with similar types of incentives and attitudes about lease retention or relinguishment.

Table A-1 has been based on information contained in Table 9 of the report "An Evaluation of Selected Provisions of the Federal Coal Leasing Amendments Act of 1976," by Harry Perry submitted to the National Coal Association on June 6, 1983.[1/] In that table, ownership of leases were divided into 13 categories, each representing a different general class of lease owner. In this table these 13 categories have been reorganized into three groups, having the following characteristics:

[1/] The adequacy and limitations of this data base are discussed in Appendix F of that report.

Group I	Those owners classes with substantial reasons favoring relinguishment of leases subject to Section 3 restrictions.
Group II	Those owners classes with somewhat less compelling reasons for relinguishment of Section 3 leases.
Group III	Those owners classes with little or no reasons for relinguishment of Section 3 leases.

It should be noted that within each of the 13 original categories of ownership types there are major differences among individual owners in the impacts of Section 3 on their total corporate operations. In addition, there are great variations in corporate strategies and management priorities that would lead to different decisions on how to treat Section 3 leases. With these caveats, the following allocations have been made of the original 13 categories of ownership into three groups:

Group I	Energy companies, Independent Coal companies, Minor Oil and Gas companies, Natural Gas Pipeline companies, Metals.
Group II	Electric utilities, Steel companies and Non-Resource Related companies.
Group III	Unincorporated individuals, leaseholding companies and "Uncategorized leases"

The rationale for these Lease Divisions are as follows:

Group I

- The energy companies - generally are major bidders on both coal and all other mineral and energy resources subject to the Mineral Leasing Act.
- Independent Coal companies - their major, if not only, function is coal production and they must be able to bid in future leased sales to continue to operate.

- Minor Oil and Gas companies - their primary business activity is oil and gas production and they must be able to bid in future oil and gas lease sales to continue operating.
- Natural Gas Pipeline companies - all are producing coal and may have to be in a position to bid for natural gas supplied or for additional coal reserves for existing or new reserves for the production of synthetic pipeline gas.
- Metals and Mining companies - are integrated companies and many of their products are heavily dependent on energy resources to produce.
- "Other leases" - most of the firms falling in this category will require large amounts of coal and other mineral resources for their future operations and must be in a position to bid in federal lease sales of these resources.

Group II

- Electric Utilities - because of the large tonnages of coal required they are in a position to negotiate competitive coal purchases although "captive" coal production is more economic under some circumstances.
- Steel companies - these companies already own large coal reserves so that, except under special circumstances, leasing of federal coal deposits is not critical to their operations.
- Non-resources related activities - although two companies are already coal producers and they are dependent on energy for some of their other operations, ownership of energy production capability is not critical to the companies' future operations.

Group III

- Unincorporated individuals - individuals who normally do not bid on new federal leases of any type.
- Landholding companies - all (except one) firms are relatively minor landholders who can be expected to dispose of their existing leases when needed by large operators.
- "Uncategorized leases" - most of these leaseholders are not financially dependent on acquiring new federal leases.

Reserves Available - Group I Leases Relinquished[1]

$$\frac{266{,}115 \text{ acres (Group I)}}{773{,}262 \text{ acres (Total)}} \times 16.5 \text{ billion tons} = 5.7 \text{ billion tons in Group I}$$

$16.5 - 5.7 = 10.8$ billion tons + 2 billion tons (new lease sales)

= 12.9 billion tons of reserves available.

Reserves Available - Group I and II Leases Relinquished[1]

Group I	266,115 acres
Group II	240,320 acres
	506,435 acres

$$\frac{506{,}435 \text{ acres (Group I \& II)}}{773{,}262 \text{ acres (Total)}} \times 16.5 \text{ billion tons} = 10.8 \text{ billion tons in Group I \& II}$$

$16.5 - 10.8 = 5.7$ billion tons + 2.1 billion tons (new lease sales)

= 7.8 billion tons of reserves available.

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[1] Assuming all acreage contains the same number of tons per acre.

Table A-1

Number and Acreage of Federal Non-producing Leases by State and type of Ownership

State	Group I[1]		Group II[1]		Group III[1]	
	Leases	Acreage	Leases	Acreage	Leases	Acreage
California					1	80
Colorado	51	63723	26	29482	18	12942
Montana	1	541	6	12541	3	688
New Mexico	2	3100	7	13294	14	10286
North Dakota	4	4559	5	4275	2	400
Oklahoma	25	30854	12	18367	11	15633
Utah	47	71151	96	141481	28	19581
Wyoming	47	92187	18	20880	5	24113
Total	177	266115	170	240320	82	83723

[1] For definitions - see text

Mr. **Brown**. At this time I would like to introduce Mr. Curtis Foster, general manager of West Elk Coal Co., Somerset, Colo.

Senator **Warner**. I interpret your comments to mean that in order for you to do orderly corporate planning, financing and cash flow projections you simply have to have some resolution.

Mr. **Brown**. That is correct.

STATEMENT OF CURTIS FOSTER, GENERAL MANAGER, WEST ELK COAL CO., SOMERSET, COLO.

Mr. **Foster**. Thank you Mr. Chairman. We have entered written testimony. We would like to request that it become a part of the permanent record.

Senator **Warner**. Indeed, all statements will become a part of the record in their entirety.

Mr. **Foster**. I would like to cover a specific example that exists in our company that I think reinforces these gentlemen's points.

I am general manager of West Elk Coal Co., a wholly owned subsidiary of Atlantic Richfield Co. We have just recently opened one of the very few mines under development in recent years, a new underground mine in western Colorado. We have three Federal leases approximating 7,000 acres that's been put together plus an additional 3700 acres of private lands. All of these leases were acquired in the 1960's, pre-1976. Permitting of this project commenced in early 1976. And using a guideline, we started in 1976, we finally received the last multiple permits addressing all the items that Mr. Brown mentioned, environmental and regulatory standpoint, in 1981, a period of 5 years, at which time construction commenced and coal was initially produced in January of 1982.

We will be producing approximately 300,000 tons this year scaling up to hopefully 1 million tons by 1987.

Currently we have invested over $35 million in the facility and anticipate an additional $15 million over the next 3 years and will be contributing to the local communities approximately $60 million in that period in operating costs.

Certainly I don't think you could consider that as speculative investment. We produce a high quality, underground, low sulfur coal that has export potential also. We will be employing upward of 175 people when we reach full employment.

That gives you a little background of our operation. I would now like to talk about section 3 and how it impacts our particular operation.

As I mentioned we have three contiguous Federal leases. Under the current permitting using the joint State-Federal OSM regulations, we are permitted in 5 year increments. And some of the background in that is to tend to equate not only the operational and environmental concerns, but an attempt to equate production and market capabilities. It's the underlying basis of the 5 year permitting increments.

In our first 5 years we will be able to mine in two of our three Federal blocks of coal. We will not be able to move into the third block, a third Federal lease, and therefore we will not be meeting the section 3 requirements mandated by August 1986.

What this means is that we and all of our affiliated companies, should we not meet the commercial quantity extraction in that third block of coal, will be precluded from obtaining any additional Federal leases. This also includes emergency leases which have not been under the moratorium and are in place to provide maintenance tests for mines that need to have additional reserves to meet existing contracts. We have mines in Utah that are in that situation currently.

Some of the things around section 3 is that in reviewing its components within the Department of Interior, there's a lot of uncertainty. What is commercial quantities? An additional item to consider is whether an LMU creation might allow us to comply with section 3. Again, a lot of confusion, a lot of inconsistent responses as to whether LMU's in section 3 do have a relation. Therefore, and the fact that since 1976 enactment the only LMU currently in place has been enacted within the last 3 months. Therefore they have not been reviewed to any extent, they have not been tested, they have not been tested against section 3. Therefore we are uncertain and do not want to rely on the creation of an LMU to meet our section 3 obligations.

The other alternative is to relinquish the one lease in question, remembering that this is a good faith effort to develop a possible coal mine. To do so would reduce the mine life by approximately 25 years, create an uncertain return on the project that we estimate at a minimum we lose federal royalties for $50 to $79. This would not be mined by a competitor due to geography, the mountainous areas that we operate in, and there is no other access to that block where realistic transportation could be obtained. Therefore we wnat to reinforce and restate our position that we do encourage repeal of section 3 as stated in S. 1634. We also agree that at the time of its enactment it did have a purpose and that was to discourage speculation. We believe it has served that purpose. Now it is going to a point of diminishing returns. If it continues it will decrease competition at a time when we need competition to maintain low prices to consumers.

Also as stated by these gentlemen, due diligence requirements are not lost by repeal of section 3. They are in place. We personally in our mind have incorporated those requirements into our plan and we feel we can comply with due diligence; section 3 is a major roadblock.

I might also point out that under the due diligence requirements there is a specific penalty related to that individual property and that is you lose your lease if you do not comply with due diligence. It is real, it is in place.

Thank you for the opportunity to speak today. Again, we do support the repeal of section 3.

Senator WARNER. Thank you.

[The prepared statement of Mr. Foster follows:]

COMMENTS ON SECTION 3 OF THE FEDERAL COAL LEASING AMENDMENTS ACT OF 1976

Submitted by
ANACONDA MINERALS COMPANY
October 18, 1983

IN RE: Section 3 of The Federal Coal Leasing Amendments Act of 1976

I am the General Manager for West Elk Coal Company, a wholly owned subsidiary of Atlantic Richfield Company. Atlantic Richfield, through its subsidiaries, operates coal mines in Utah, Wyoming and Colorado. These subsidiaries operate under the control of Anaconda Minerals Company, a division of Atlantic Richfield. Each of our operating mines is currently mining at least one federal coal lease. We are, therefore, very interested in expressing our views on Section 3, which if not repealed, could force companies with producing mines on federal leases to relinquish their leases. We urge repeal.

West Elk Coal Company is currently operating the Mount Gunnison Mine (underground) located in Gunnison County, Colorado, just east of the town of Paonia (see Exhibit A). We hold three (3) federal coal leases totalling more than 7000 acres and more than 3700 acres of private coal (see Exhibit B). All three federal leases were issued prior to 1976.

We began acquiring a land position in the area in the late 1960's and are continuing to obtain necessary coal and surface acreage. We started our permitting work in 1976 and began construction of the mine in late 1981. In 1982, we commenced mining and produced 131,000 tons. In 1983 we will produce approximately 300,000 tons.

As any operator can verify, coal production is an expensive business. We have currently invested over $35 million in the Mount Gunnison Mine, including $26 million in permanent surface facilities, such as silos, a state of the art loadout, conveyors and crusher. By 1986, we anticipate our investment at Mount Gunnison will total $50 million. In addition, we estimate we will have expended $60 million in operating expenses, much of which will be spent in the local community. There should be no doubt that we are committed to mining at Mount Gunnison over the long term.

Congress passed Section 3 in part to eliminate speculation in coal reserves. I think it's fair to say that it has been effective in its original purpose. There is little or no evidence of attempted speculation in new leases, and for older leases (pre-1976), Section 3 will induce some leaseholders to relinquish their leases if they are not producing by 1986. Section 3, however, reaches beyond its intended targets and threatens to unfairly penalize good-faith coal operators. As I have previously stated, West Elk Coal Company will have expended approximately $110 million on its operations by 1986. We are currently mining 300,000 tons per year and project that we will mine 700,000 tons per year by 1987. Clearly by no stretch of imagination could West Elk be considered a speculator which has not made a diligent effort to develop its leases. Yet, as a result of the inflexibility of Section 3's proscription, West Elk is about to suffer the same sanctions designed for use against coal lease speculators.

My understanding is that Section 3 requires production of commercial quantities of coal from each lease within 10 years of the date the company acquired the lease. For pre-1976 leases, the 10 year period began August 4, 1976. The term commercial quantities is not defined in Section 3 but is defined in the coal leasing regulations as "one percent of the recoverable coal reserves or LMU recoverable coal reserves". (The attached Exhibit C shows the complexity of determining the recoverable coal reserves.) Therefore, for West Elk to comply with Section 3 it must produce one percent of its recoverable coal reserves by August, 1986. To do so, we will encounter many problems that I will now briefly summarize.

The first problem is determining the recoverable reserves. In 1976, the Bureau of Land Management provided West Elk a rough estimate of the recoverable coal reserves located upon West Elk's federal leases. At the time these estimates were made coal that was produced from the area of our mine was selling for approximately $35.00 per ton. Unfortunately, today's market price is approximately $20 per ton. This price reduction very significantly impacts the amount of coal that is commercially recoverable. Accordingly, Section 3 production requirements should be significantly lowered but we don't know exactly how much. In other words we don't know how much coal we would have to produce to meet the production requirements.

To comply with Section 3, it's not just a matter of increasing production. Section 3 does not simply require that "x" amount of coal be mined; coal must be mined from each federal lease. To do this we would have to drastically alter our mine plan. This would be very expensive and would result in a loss of productivity. We would also face permitting problems. The current 5-year mine permit, issued in 1981, limits us to a specific area. The size of this area was based upon the quantity of coal that we anticipated could be mined and sold during the 5-year permit term. To increase production solely to meet Section 3 would require us to mine outside of our current 5-year permit boundary. Until a new permit is obtained, the timing of which is not entirely within our control, the required production is not possible.

Another critical problem we will face is marketing the coal. Our current production plan is balanced with our ability to sell the coal. Within certain limitations, the best way to recover costs and eventually make a profit is to mine as much coal as you can, as quickly as you can, and to sell it at the highest price. It makes no sense, however, to mine coal that cannot quickly be sold. If some companies try to comply with Section 3 by mining at levels which are not in response to market conditions, prices will quickly drop even lower than where they are now. Given the traditionally low profit margin for each ton of coal sold, it is evident that these companies would soon be producing at a loss and then forced to suspend or scale back operations.

If Section 3 is not changed and we are unable to comply we may have no choice but to relinquish the non-complying leases. What this means is that the State of Colorado and the Federal Government will lose out on substantial production royalty payments and taxes. The relinquished leases could, of course, be leased to another company and mined, but realistically, the leases would not be mined for many years, if ever, because they are probably not viable as stand-alone tracts.

We are currently one of the largest employers in Gunnison County. By 1986 we expect to employ approximately 150 people. We are also one of the largest taxpayers in Gunnison County. If we relinquish some of our leases we will have to scale back our mining operations which will reduce the mine life by as much as 25 years. Two nearby mines have recently either closed down completely or substantially reduced operations. There was of course a loss in jobs and tax payments to the county. We don't think the county wants to lose any more jobs or tax revenue and we don't want to jeopardize our multi-million dollar investment.

Some people might argue that in Section 3 compliance situations similar to West Elk's, the creation of a Logical Mining Unit (LMU) would be a viable solution. As previously noted, there currently exists three separate federal leases at West Elk. West Elk mine plans do not call for the actual mining of "commercial quantities" of coal from each of the leases until some time after the Section 3 compliance deadline (August 4, 1986). The LMU option would entail the combining of these leases into a single LMU. As a result, satisfactory production from the LMU could then be credited against all leases encompassing the LMU in calculating Section 3 production requirements.

I believe the LMU solution is undesirable for a number of reasons. First, while LMU's have been authorized since 1976, the first one has only recently been finalized. As a result, I think it is fair to say that neither the Department of Interior nor the coal industry has a clear understanding of all the potential ramifications surrounding the creation and operation of an LMU. Furthermore, it is evident from our contacts with the Department of Interior personnel that they are uncertain as to whether the LMU scenario referenced above would in fact be acceptable in meeting Section 3 compliance. Additionally, from an operational perspective, I find the LMU 40 year mine-out requirement unsatisfactory. The establishment of this type of artificial production requirement is not compatible with the economic realities of the market place. From this perspective it is similar to the production requirements of Section 3. Given all of these factors, I am reluctant to rely upon the creation of an LMU as a definitive solution to any potential Section 3 problems West Elk may encounter.

Our Mount Gunnison Mine is not our only mine that may face a Section 3 problem. Thunder Basin Coal Company, another wholly owned subsidiary of Atlantic Richfield, and operated by Anaconda, operates two surface mines in Campbell

County, Wyoming, south of Gillette (see Exhibit D). One of the mines, Black Thunder, produced almost 17 million tons in 1982, making it the largest coal mine in the country.

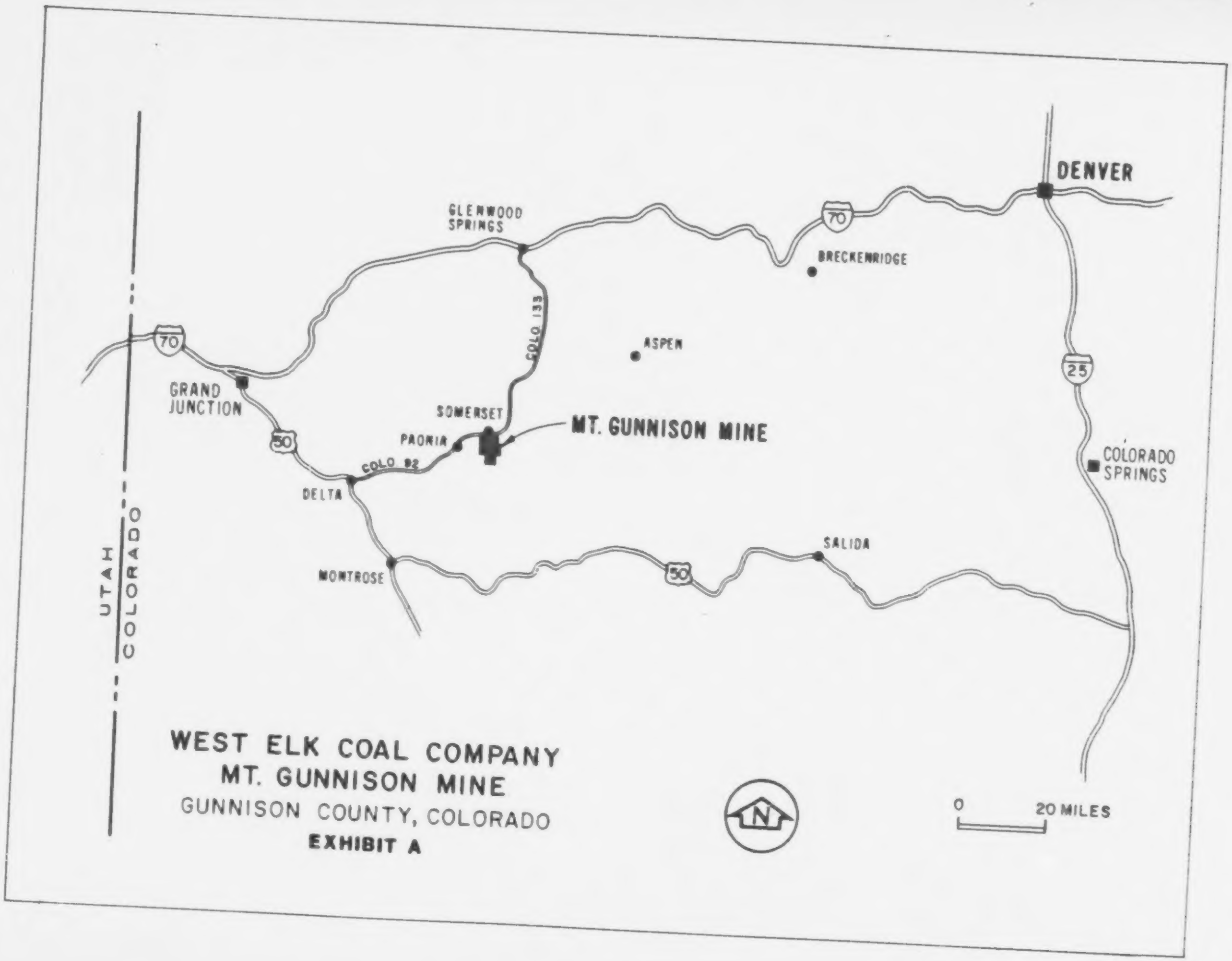
The problem we may face at Black Thunder involves one 40 acre federal lease (colored yellow on the attached Exhibit E). This lease is scheduled to be mined around the year 2009 when our mining operations will have progressed into that area of the mine plan.

Because we will not mine this lease by 1986, unless Section 3 is repealed, we may relinquish this lease. That would not be a catastrophic loss - we hold more than 7,200 acres at Black Thunder, but it does illustrate how ludicrous application of Section 3 can be, particularly to a producing mining operation. A 40 acre lease which is included in the mine plan of the largest producing mine in the country could conceivably prevent Thunder Basin as well as Atlantic Richfield and all of its affiliated companies from acquiring any additional federal leases.

Section 3 was enacted to prevent speculation and to ensure the timely development of federal coal leases. It has served its purpose and is no longer needed, particularly since the diligent development requirements of the coal leasing regulations accomplish the same objectives. The current coal leasing regulations provide that the holder of a pre-1976 lease shall have 10 years after the next readjustment of the lease to initiate production in commercial quantities. It will not be unusual for a company to be in full compliance with diligent development and yet still fail to comply with Section 3. For example, one of our leases at Mount Gunnison is scheduled for readjustment in 1985 and therefore must comply with diligent development by 1995. Between 1985 and 1995 we will be in full compliance with the regulations but we may not be able to meet Section 3's August, 1986 deadline. We believe that diligent development should not be measured solely by production and that our extensive investments in our mining operations have proven diligence. Whatever the measure of diligent development, the coal leasing regulations will provide a sufficient safeguard against speculation and will ensure timely development of leases.

Section 3's production requirement encumbers West Elk's and Black Thunder's ability to logically develop their federal leases from both an operational and economic perspective. I urge all of you to support the repeal of Section 3's leasing proscription.

I appreciate this opportunity to appear before the Subcommittee to present my views on the matter of the repeal of Section 3.



WEST ELK COAL COMPANY
MT. GUNNISON MINE
GUNNISON COUNTY, COLORADO
EXHIBIT A

DENVER
GLENWOOD SPRINGS
70
BRECKENRIDGE
COLO 133
ASPEN
GRAND JUNCTION
25
SOMERSET
MT. GUNNISON MINE
PAONIA
50
COLO 92
COLORADO SPRINGS
DELTA
SALIDA
MONTROSE
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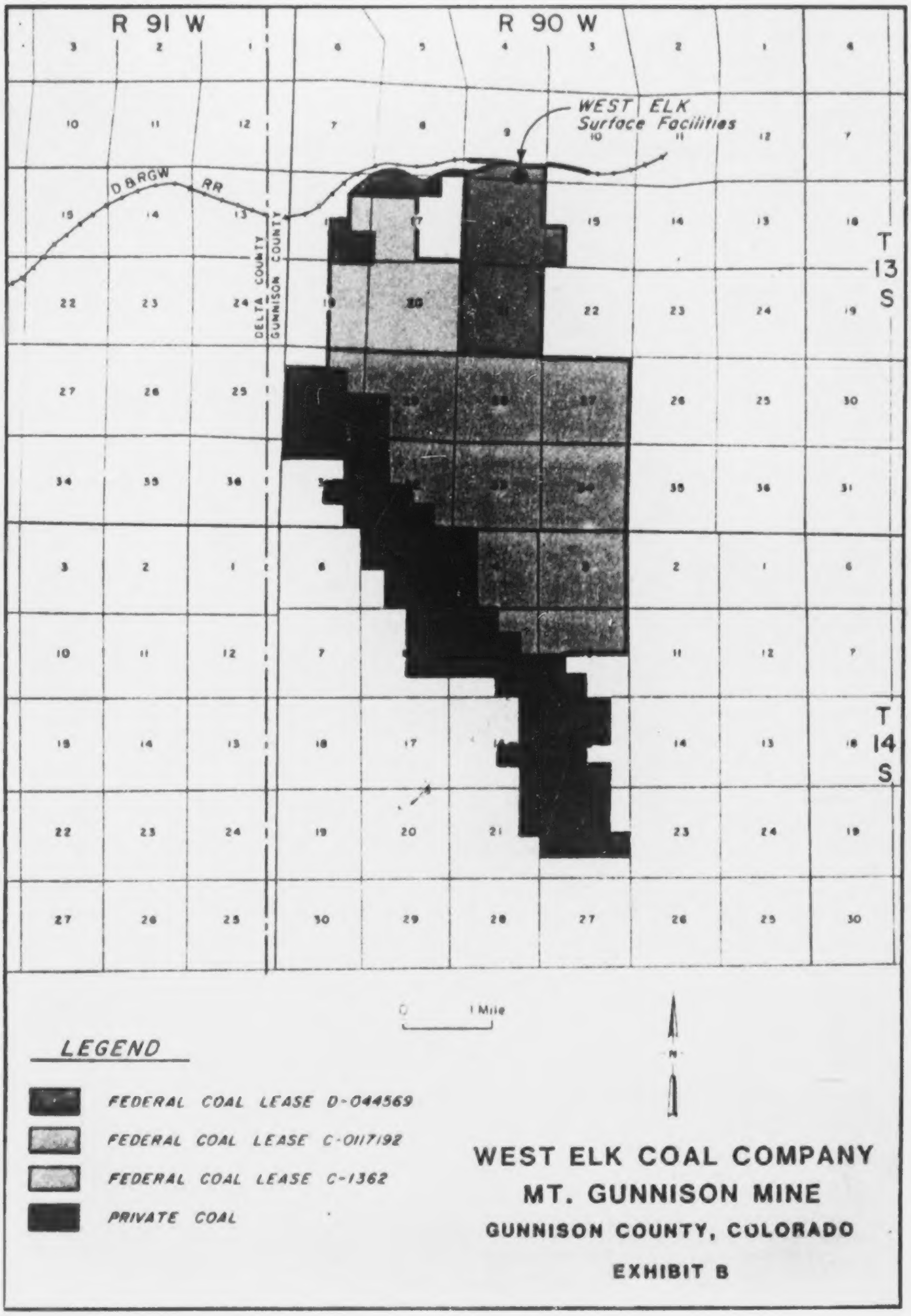
R 91 W
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WEST ELK Surface Facilities
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FEDERAL COAL LEASE C-0117192
FEDERAL COAL LEASE C-1362
PRIVATE COAL

WEST ELK COAL COMPANY
MT. GUNNISON MINE
GUNNISON COUNTY, COLORADO

EXHIBIT B

EXHIBIT C

Definition of Commercial Quantities

1. Commercial quantities means one percent of the recoverable coal reserves or LMU recoverble coal reserves.
43 C.F.R. 3480.0-5(a)(7)
(formerly 30 C.F.R. 211.2(a)(7)).

2. Recoverable coal reserves means the mineable reserve base excluding all coal that will be left, such as in pillars, fenders, and property barriers.
43 C.F.R. 3480.0-5(a)(37)
(formerly 30 C.F.R. 211.2(a)(37)).

3. Mineable reserve base means that portion of the coal reserve base which is commercially mineable and includes all coal that will be left, such as in pillars, fenders, or property barriers. Other areas where mining is not permissible (including, but not limited to, areas classified as unsuitable for coal mining operations) shall be excluded from the mineable reserve base.
43 C.F.R. 3480.0-5(a)(27)
(formerly 30 C.F.R. 211.2(a)(27)).

4. Coal reserve base shall be determined using existing published or unpublished information, or any combination thereof, and means the estimated tons of Federal coal in place contained in beds of:

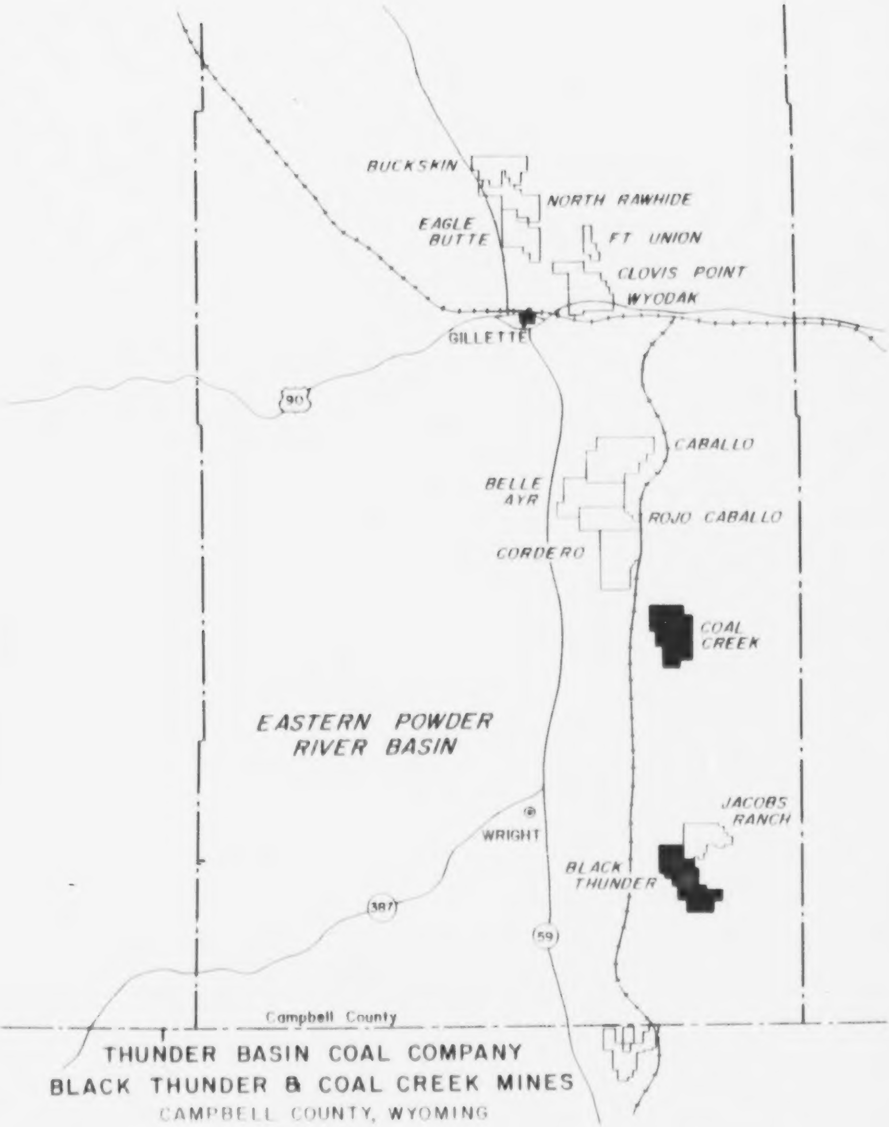
   (i) Metallurgical or metallurical-blend coal 12 inches or more thick; anthracite, semianthracite, bituminous, and subbituminous coal 28 inches or more thick; and lignite 60 inches or more thick to a depth of 500 feet below the lowest surface elevation on the Federal lease.

   (ii) Metallurgical and metallurgical-blend coal 24 inches or more thick; anthracite, semianthracite, bituminous and subbituminous coal 48 inches or more thick; and lignite 84 inches or more thick occurring from 500 to 3,000 feet below the lowest surface elevation on the Federal lease.

   (iii) Any thinner bed of metallurgical, anthracite, semianthracite, bituminous, and subbituminous coal and lignite at any horizon above 3,000 feet below the lowest surface elevation on the Federal lease, which is currently being mined or for which there is evidence that such coal bed could be mined commercially at this time.

   (iv) Any coal at a depth greater than 3,000 feet where mining actually is to occur.

43 C.F.R. 3480-0-5(a)(6)
(formerly 30 C.F.R. 211.2(a)(6)).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ROJO CABALLO
CORDERO
COAL CREEK
EASTERN POWDER RIVER BASIN
JACOBS RANCH
WRIGHT
BLACK THUNDER
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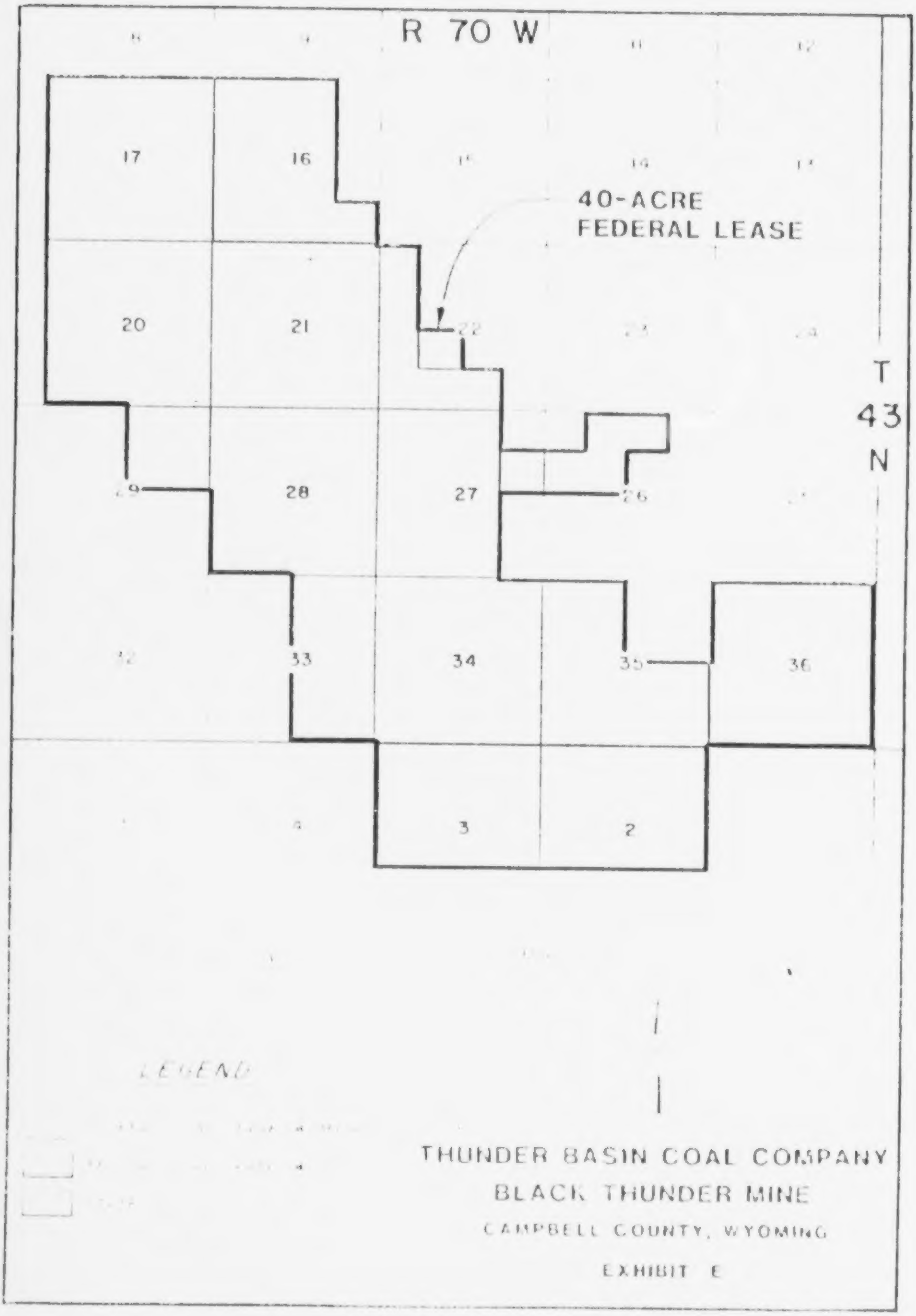
Campbell County

THUNDER BASIN COAL COMPANY
BLACK THUNDER & COAL CREEK MINES
CAMPBELL COUNTY, WYOMING
EXHIBIT D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LEGEND

THUNDER BASIN COAL COMPANY
BLACK THUNDER MINE
CAMPBELL COUNTY, WYOMING

EXHIBIT E

Senator **Warner**. Thank you gentlemen for traveling a long distance to come here and join us today.

Mr. **Holsten**. We have here a copy of Mr. Perry's report. I don't know if it's been entered in your record. With your concurrence we would like to do so. And secondly, in Senator Johnston's absence we would very much like to respond to the various points——

Senator **Warner**. I think it's important that you do respond to the ranking minority member. The Chair would also like to say, as you know the Commission on Fair Market Value is now studying the issues of fair market value for Federal coal leases. One of the elements in their review is the repeal of section 3 of the Federal Coal Leasing Amendments Act. For this reason, we will forward a copy of this record to the Commission for their review.

Thank you very much.

We'll now hear from another panel. Of course this record will remain open for a period of two weeks to receive additional statements.

Mr. Geoff Webb, Friends of the Earth, Washington, D.C.; David Alberswerth, legislative representative, National Wildlife Federation, Washington, D.C.; and David Masselli, Washington representative, Western Organization of Resource Councils, Washington, D.C.

Mr. Webb is not here. We'll make certain his remarks are put in the record.

STATEMENT OF DAVID ALBERSWERTH, RESOURCE SPECIALIST, NATIONAL WILDLIFE FEDERATION, WASHINGTON, D.C.

Mr. **Alberswerth**. Mr. Chairman, thank you very much for this opportunity to present the views of the National Wildlife Federation on S. 1634. I'll try to summarize my statement and I'd like my full statement entered into the record.

The National Wildlife Federation is opposed to repeal of section 3 of the Federal Coal Leasing Act Amendments referred to as section 2(a)2(A) in our testimony. We also oppose the repeal of the contiguity requirement. We have no position on section 3 of the bill.

We have supported the concept of due diligence in the Federal Coal Leasing Act amendments and we believe that repeal of section 3 does violence to that concept. We have seen an erosion of the due diligence requirements as they apply to pre-1976 leases with the advent of the current administration; where the Ford admininstration's rules required that diligence be met by 1986 the current rule requires that diligence be met 10 years from lease readjustment. And the reality of the situation that we have is that a great number of pre-1976 leases were issued in a period of the mid to late 1960's. Under the current rules those leases will not be adjusted in 1986 and diligence must be met by, well in the mideighties and the diligence must be met by the mid to late 1990's which gives those companies with whole leases 30 years to develop, to meet diligence which is now defined as 1 percent rather than 2.5 percent as under the Ford administration rules.

The section 1 of 1634 would complete the process of eroding those diligence requirements for 1976 leases. It simply requires that those lessees meet, produce 1 percent of reserves by 1986 which in effect gives a lot of those lessees, particularly the ones with all the leases from the midsixties, about 20 years to produce 1 percent of their reserves. We think that's plenty of time.

The coal industry now has 7 years to deal with this matter; by 1986 of course they will have had 10 years from date of enactment.

Our written testimony details some examples which I'll just give you one here, the holdings of some of these companies. Consolidation Coal has a total of 32 nonproducing Federal coal leases, most of them issued in the midsixties. Many of them were preferenced, or at least applications which meant they were issued without any bonus bids. They have royalty obligations of 15 to 20 cents a ton and they've been paying rentals of $1 to $3 per acre.

Peabody Holding Co. is another large Federal leaseholder of the West. It has according to the Office of Technology Assessment, 8 percent of all nonproducing Federal coal leases, a total of about 22 leases.

OTA, by the way, figures that roughly 40 percent of all leases as of 1981 had no development plans for them. This includes over about 6 billion tons of coal.

Our basic position is that we believe that those lessees who have pre-1976 leases should be barred from obtaining any new Federal coal leases. In other words, we would support modification of section 3 which would simply prohibit the issuance of new coal leases rather than oil and gas leases as well.

The second issue we want to address today is the contiguity requirement. We believe it should be made in the law. We believe that sufficient flexibility exists. Senator Johnston earlier read from a document that accompanied the current rule called the Termination of Effective Rules, which had this to say about the new definition. "The term LMU has been redefined to remove the implication that all land within that LMU must be underlaid by coal." LMU allows coal beds that are interrupted by burn lines or such legal separations such as rights of way to be included in one LMU, thus insuring that a single operation could mine all portions of the recoverable coal reserves because more coal could be included in the LMU.

In the current definition of the words contiguous and logical mining and the 211 rights reflect that flexibility. We think that is sufficient to take care of any problems and we think repeal of the contiguity requirement of the statute would lead to abuse. For example in the Powder River Basin of Wyoming there are at least two companies that have mines that are separated by a distance of 12 to 15 miles. We could see a situation developing whereby a coal company obtains a new lease that's at some distance from its existing operation, declares that that's part of his logical mining unit, and therefore can circumvent the diligent development requirements on that new lease. And that's the abuse that we see as a possibility if the contiguity requirement is repealed.

That concludes my statement.

[The prepared statement of Mr. Alberswerth follows:]

STATEMENT OF
DAVID ALBERSWERTH
FOR THE
NATIONAL WILDLIFE FEDERATION

Mr. Chairman, Members of the Subcommittee, my name is David Alberswerth, and I am a Resource Specialist for the National Wildlife Federation. First, I would like to thank the Chairman and the Subcommittee for the opportunity to express our views today on S. 1634, "A Bill to Amend the Mineral Lands Leasing Act of 1920." The National Wildlife Federation is a private, nonprofit conservation and education organization with over 4.2 million members and supporters in all 50 states. We have a longstanding interest in and concern with the management of the nation's vast coal resources.

Passage of the Federal Coal Leasing Act Amendments in 1976 (FCLAA) initiated a number of significant reforms in the federal government's coal leasing program. Among the most important of these are the following: land use planning must precede the issuance of new federal leases so that environmentally-sensitive areas can be screened out before development commitments are made; sales must be by competitive bidding so that fair market value is received for federal coal leases; a 12½ percent royalty is mandatory to insure a fair return from the production of federal coal; and leases must be diligently developed to discourage speculation and to introduce a measure of predictability regarding when impacts will occur to the environment and local communities. We believe that all of these reforms were and are necessary. Taken together these important reforms assure that the nation can develop needed federal coal reserves in a manner which is both economically and environmentally sound.

We believe that the "diligent development" requirements, the subject of today's hearing, are a necessary part of these interrelated reforms. Section (2)(a)(2)(A) of the Mineral Leasing Act compels pre-FCLAA leaseholders--most of whom obtained their leases in the mid-1960's--either to develop their leases or relinquish them to the government. The section increases the chances that government officials and others concerned about coal development can accurately predict where the environmental and other impacts of future coal development will occur. It also helps planners to determine how much future leasing is needed to meet expected production needs.

This Subcommittee is presently considering two major changes to the Federal Coal Leasing Act Amendments which would severely undercut the present diligent development requirements:

-- Section 2 of S. 1634 would repeal the prohibition on pre-FCLAA leaseholders who have non-producing federal coal leases from obtaining additional federal leases after 1986, thus permitting some lessees to hold leases without penalty for thirty to forty years without producing any coal on them; and

-- Section 3 of S. 1634 would open a wide loophole in the diligence requirements by dropping the "contiguity" requirement.

For reasons that I will now explore, each of these proposed changes are ill-founded and should be rejected.

Repeal of Section 2(a)(2)(A)

As the Subcommittee is aware, under the rules changes issued by the Interior Department in July of 1982, holders of pre-1976 leases have until 10 years after their first readjustment to meet diligence. Previously, under the Ford Administration rules, leaseholders were required to meet diligent development requirements by 1986. Also, the production rate was reduced from 2-1/2 percent of lease reserves to 1 percent of "logical mining unit reserves." (47 F.R. 33154 et seq., July 30, 1982).

The new regulations therefore created an anomaly in the law. On the one hand, lessees with pre-1976 leases have until the mid-to-late 1990's to meet diligence. On the other hand, Section 2(a)(2)(A) provides that leaseholders with pre-1976 leases who do not meet diligence by 1986 may not obtain any other federal mineral leases. Holders of pre-1976 leases are now attempting to bootstrap themselves onto the extended diligence requirements and are asking Congress to help them. We oppose such a change.

Under the new rule, a lease issued in 1965, and readjusted in 1985, will not have to meet the diligence requirement until 1995. Another way of viewing this particular example is that a 1965 lessee will have 30 years to produce 1 percent of the lease's reserves. By 1986, when Section 2(a)(2)(A) will prohibit lessees with non-producing pre-FCLAA leases from obtaining other federal mineral leases, these lessees with leases issued in the early-to-late 1960's will have had roughly 20 years to begin production on their leases. By contrast, lessees who obtained their leases after 1976 will have had only 10 years. In other words, the Department's new rules grant distinct advantages to holders of pre-FCLAA leases.

Only Section 2(a)(2)(A) acts as a disincentive to these pre-1976 leaseholders from the continued, nonproductive holding of their leases. As such, it should properly be viewed as an enforcement mechanism. It enables the government to retrieve coal reserves from lessees who have not been producing coal on them, and thereby discourages continued speculation. And, there are many non-producing coal leases. According to the Department, as of April 1983, of 627 federal coal leases issued, only 115 are in production.[1/]

Many large energy companies hold such non-producing leases. For example, Texaco holds five leases near Lake DeSmet in the Powder River Basin of Wyoming. These leases were issued between 1955 and 1966, and total 9,417 acres. According to the Office of Technology Assessment (OTA), these leases represent a total mining capacity of 20 million tons per year.[2/] Two of these leases were obtained through Preference Right Lease Applications (PRLAs), so no bonus bids were paid. One was obtained for a $1 per acre bonus bid, another was obtained for a $3 per acre bonus, and the last for a $27 per acre bonus. The only current revenue obtained from these leases is the $1 to $3 per year rent per acre. Texaco would probably prefer to sit on these leases indefinitely, and can do so until the mid-1990's.

1/ Letter from Assistant Secretary for Land and Water Resources Garrey Carruthers to Rep. Jim Weaver, June 2, 1983.

2/ An Assessment of Development and Production Potential of Federal Coal Leases, Office of Technology Assessment, December, 1981, p. 181.

But if Texaco wants to obtain any additional federal coal leases, or oil or gas leases, these Lake DeSmet leases will have to be relinquished by August of 1986.

Another example is Consolidation Coal, a subsidiary of Conoco. Consol has a total of 32 non-producing federal coal leases issued during the 1960's. As with the above-mentioned Texaco leases, many of these were PRLAs which brought no revenue in the form of bonus bids, and the only current financial obligation to the government is a yearly rental of $1 to $3 per acre. Though last year's rules changes will enable Consol to hang onto those leases until the mid-to-late 1990's without meeting diligence, Section 2(a)(2)(A) will prevent Consol from obtaining any other coal leases after 1986.

A final example is Peabody Holding Company. As of December 1981 Peabody held 8% of all federal coal leases, covering 62,000 acres.3/ Interior Department records show that as of June of this year, Peabody held 22 non-producing federal coal leases, most of them issued in the mid-to-late 1960's.4/

The total amount of coal in such undeveloped leases is impressive. Drawing once again on the 1981 OTA study, there are 249 federal leases covering 338,000 acres, and containing 6.6 billion tons of coal for which no mine plans have been submitted.5/ Another way of viewing this is that 44% of all

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3/ Ibid., p. 13.

4/ Op. cit.

5/ Op. cit., p. 3.

leases, 42% of all leased acreage, and 40% of all leased reserves in 1981 were held by lessees who had not submitted mine plans.[6]

The question the coal industry has not answered here is, if a company has old federal coal leases, which like those mentioned above, were more often than not picked up very cheaply in the mid-60's or earlier, and has been holding them without producing any coal on them, why should that company be able to obtain additional federal coal leases? By holding them the lessee is depriving the government of revenue it could collect if they were retrieved and offered up for competitive sale. We believe that federal coal lessees should not be rewarded for holding federal coal reserves without producing any coal on them. We argued against the repeal of the old diligence requirements and have sued the Department over the change. And we believe that the prohibition on obtaining new federal coal leases should be retained in Section 2(a)(2)(A).

Repeal of the "Contiguity" Requirement

Section 3 of the proposed bill would repeal the contiguity requirement in the definition of logical mining units (LMU). We oppose this repeal. Retention of the contiguity requirement is important because of the manner in which the diligent development regulations are administered. Under the Department's present rule, a new lease may be incorporated into an existing mining operation as an LMU at the request of the lessee. In so doing, production from the total LMU is counted toward meeting the diligent development requirement for the new lease.

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[6] Ibid., p. 15.

If the contiguity requirement is abolished, a lessee could incorporate a new lease which is located at some distance from an existing operation into an LMU, and then claim production from the LMU against the diligent development requirement of the new lease. This opportunity for abuse is not unlikely, given current western coal development patterns. In the Powder River Basin of Wyoming, for example, Exxon has two large operations (Rawhide and Caballo) separated by about 12 miles. Likewise, AMAX's Eagle Butte and Belle Ayr mines are separated by about 15 miles. The federal coal reserves which underlie that part of the country extend in a strip which is roughly 120 miles long. It is not hard to imagine a lessee with an operation in the southern part of the strip obtaining a lease in the northern part and claiming that the totality of his holdings comprises a logical mining unit under provisions of the proposal. Or, the situation could arise with coal deposits separated by only a few miles.

It is important to point out that the problem this amendment seeks to address was resolved to the coal industry's benefit in the new coal program regulations. To quote from the "Determination of Effects of Rules" (May 3, 1982) which accompanied the revised "211" rules:

> "The term 'LMU' has been redefined to remove the implication that all land within an LMU must be underlain by coal.... Redefining LMU

> allows coal beds that are interrupted by burn lines or such legal separations as rights-of-way to be included in one LMU, thus ensuring that a single operation could mine all portions of the recoverable coal reserves because more coal can be included in an LMU. The existing definition ... could have forced an LMU boundary to be the line of separation within the coal bed...."

The current definitions of "contiguous" and "logical mining unit" therefore read:

> "Contiguous means having at least one point in common, including cornering tracts. Intervening physical separations such as burn or outcrop lines such as rights-of-way do not destroy contiguity as long as legal subdivisions have at least one point in common." (30 CFR 211.2(a)(8)).

> "Logical Mining Unit (LMU) means an area of land in which the recoverable coal reserves can be developed in an efficient, economical, and orderly manner as a unit with due regard to conservation of recoverable coal reserves and other resources. An LMU may consist of one or more federal leases and may include intervening or adjacent lands in which the United States does not own the coal reserves. All lands in an LMU shall be under the effective control of a single operator/lessee, be able to be developed and operated as a single operation, and be contiguous." (30 CFR 211.2(a)(22)).

In light of the above flexibility built into the Department's definition of LMU and the interpretation given to it by Interior, we believe that the statutory definition of LMU, which requires that all lands within an LMU be contiguous, should be retained. It is obvious from the Department's interpretation of the continuity requirement that nothing prevents rights-of-way, or other features of the legal or geographical landscape from being included in a logical mining unit. Abolition of the contiguity requirement could lead to abuse of the diligent development requirement.

Conclusion

In conclusion, we believe that the prohibition on acquisition of new coal leases by lessees with undeveloped pre-FCLAA leases should be retained, and that the contiguity requirement for logical mining units should remain in effect.

Senator WARNER. Thank you very much.

STATEMENT OF DAVID MASSELLI, WASHINGTON COUNSEL, WESTERN ORGANIZATION OF RESOURCE COUNCILS, WASHINGTON, D.C.

Mr. MASSELLI. Thank you very much for this opportunity to present the views of the Western Organization of Resource Councils. Our 3,500 member families are farmers, ranchers and other citizens who live in the rural areas of the west. Their concern is that the development take place in a manner that does not disrupt the livelihood, lifestyles and homes of those people who already live there.

I'd like to give you a very different perspective from that which the industry has presented on the perspective of that of the rancher and farmer and person living in Montana, Wyoming, and North Dakota.

One of the more shameful episodes in the history of Federal land management occurred in the 1960's when the Department of Interior issued over 300 dirt cheap competitive leases and questionable noncompetitive coal leases. Many of these leases were located on operating farms and ranches. The surface owners received only the minimal protection afforded the Stock-Raising Homestead Act of 1916. These 380 leases are really the leases we're talking about today.

While the amount of coal under lease skyrocketed, in the 1960's production dropped and it was readily apparent that speculators taking advantage of low prices—no bonus was required for a for preference right lease—and unenforced diligence provisions, were buying up Federal coal to wait for the day when they could reap windfall profits. Many of these Federal leases were later resold or assigned for millions and tens of millions of dollars, with the Federal Government and the taxpayer totally cut out from these profits.

The outcry over the first great coal leasing givewaway led to a moratorium that was not lifted until Congress had made major legislative changes in the Federal coal management program.

In 1976 and 1977, the Congress passed landmark legislation which profoundly changed the nature of coal mining in this country. The Surface Mining Control and Reclamation Act (SMCRA) established much-needed environmental standards for strip mining. It also guaranteed that never again would a surface owner above Federal coal be subject to surface mining on his or her property without consent. Unfortunately, section 714 of SMCRA did not apply to the already granted Federal coal leases.

Congress also addressed the problem created by the giving away of valuable mineral rights to speculators. The Federal Coal Leasing Act Amendments of 1976 (FCLAA) established a simple and long overdue policy: Federal coal resources could only be transferred out of the public domain for fair market value to purchasers who were willing and able to develop those resources within a reasonable time.

The requirement for the receipt of fair market value was one critical element of the attack on speculation. But the Congress realized that speculation could not be deterred unless leaseholders were required to produce coal within a reasonable time.

Three steps were taken to guarantee that Federal coal would be held by companies willing to mine it to meet our energy problems, rather than speculators holding coal in anticipation of a windfall. Section 7 of FCLAA established a 10-year diligence requirement for all subsequently issued Federal leases. Concurrently promulgated regulations gave old leases, regardless of when initially issued, until June 1, 1986, to meet diligent development. Finally, section 3 of FCLAA established a second diligence requirement for old and new leases, forbidding any company which failed to develop a lease it had held for 10 years, beginning in 1976, from receiving any other lease under the Mineral Leasing Act, for example, coal, oil, gas, phosphate, sodium, and so forth.

This sensible scheme to insure timely development of public energy resources is now under serious attack. Mr. Watt, acting on the flimsiest of pretenses has already removed one of the key diligence guarantors, revoking the regulations which required production by June 1, 1986, from old leases. Now the holders of these old leases are before the Congress crying that they are being unfairly treated by section 3 of FCLAA.

Nothing could be farther from the truth.

What the holders of old leases seek is an opportunity to gain an unfair advantage over all other Federal coal lessees.

Let me point out that the average old lease was issued in 1967. The lessee paid less than 0.3 cent per ton. By 1986, these lessees will have had nearly 20 years to develop their holdings. Beginning in 1976, they were placed on notice that their leases would be canceled in 1986 if they had not achieved diligent development.

Approximately half of the old leases will not be affected by section 3. They are producing. This is not surpising. Demand for Western coal has increased dramatically in the last decade. Those lessees that do not achieve production by 1986 will have had adequate time to develop their leases. In many instances, lessees holding affected old leases also hold many producing leases. They have made a business decision to develop some leases and not others.

What they seek now is the ability to hang onto their old, cheap leases into the late 1990's. It is important to recognize that the old leases will not be subject to diligence clock until long after many of the new leases. Thus the holder of an average 1967 lease in the Powder River Basin will have until 1997 to develop that lease if section 3 does not apply. He will be competing against newer leases that have a 10-year diligence period, that have paid a higher bonus, that must pay reasonable surface owner compensation, that may be subject to more demanding environmental lease terms and that may well have a higher royalty during most of this period.

Thirty years to develop a lease. There is no other term for this than speculation.

The holders of these old leases claim that the section 3 prohibition against receiving any Mineral Leasing Act leases is unfair, that they are singled out. There is some truth to this. Similar prohibitions do not apply to oil and gas leaseholders. Their leases are automatically revoked at the end of a 5-year period without development. The old coal lease holders are, with the exception of oil shale lessees, the only persons allowed to retain Federal mineral leases without even a semblance of diligent development.

The only persons allowed to retain substantial mineral leases without the semblance of diligent development would be the holders of these old coal leases. If the—

Senator **Warner**. If I understand you, oil shale lessees, because of the added time resulting from technological problems, they have experienced more difficulty than coal lessees.

Mr. **Masselli**. What I'm saying is there are two types of people who hold Federal leases which they're not developing diligently, oil shale lessees and coal lessees. And although we have many things to say about oil shale lessees, I think we all agree that they face substantial technical problems which do not exist for the coal lessees and they probably have a much greater justification for holding their leases.

Senator **Warner**. I visited all the oil shale operations in the country and I'm thoroughly familiar with their problems and I'm glad you make that pragmatic observation.

Mr. **Masselli**. I would like, in closing, to address what would happen if many of these leases are turned in. I think it's fairly obvious that if section 3 stays in place the leases will be turned in. Exxon is not going to get out of the oil and gas business, Mobil is not going to get out of the oil and gas business. If push comes to shove, these people will turn their leases in.

Will it put people out of work? No, because nonexistent mines don't employ any more. Will the States lose significant revenues? No. The old lessees are paying a pittance in advance royalties. Will comeptition be diminished? I think just the opposite because new entrants will no longer have to compete against some fairly privileged old lessees. Clearing up the backlog of old leases will also make it a lot easier to issue new leases.

Right now every time you look at a lease sale in an area like Powder River and an area like Fort Union, the question we ask ourselves and I think the question everyone asks is how much coal is really going to be developed in that area? What is happening with those 250 old leases? When those have been cleared up and we know which are gone and which are really going to develop, we'll know whether we really have 16 billion tons under lease or 5 billion or where, and when we know that we can make much more intelligent decisions. And let me point out that the coal isn't going to go anywhere. If the market comes back then what will happen is that these coal companies will reacquire coal and they'll acquire it the way people do right now. They will have bonus bids, they will pay 12.5-percent royalty and they will have to develop it within 10 years.

It strikes me that everyone, Federal Government, the States, leaseholders, the surface owners, all benefit. The only loser is the person who's holding an old lease they didn't pay anything for and we hope that the committee will reject the speculators. People have had 20 years. If they can't develop it, I think just like the holders of stock options, they run out. The time has come to an end. And you don't give away something very valuable for nothing.

Thank you very much.

[The prepared statement of Mr. Masselli follows:]

STATEMENT OF

THE WESTERN ORGANIZATION OF RESOURCE COUNCILS

PRESENTED BY

DAVID MASSELLI
WASHINGTON COUNSEL

MR. CHAIRMAN, on behalf of the Western Organization of Resource Councils, I would like to thank you for this opportunity to present our views on S. 1634. We strenuously oppose this ill-considered legislation which rewards speculation, punishes farmers and ranchers, and erodes the legislative consensus underlying our Federal coal program.

Let me note the irony that we are even here today considering this legislation. For more than two years, Mr. Watt, the Department of the Interior, many of his Senate supporters and the coal industry have enthusiastically supported a massive coal leasing program of unprecedented scope. The Secretary hoped, in one short term, to lease as much Federal coal as all previous Administrations combined since the passage of the Mineral Leasing Act of 1920. This flawed program was defended as necessary to meet anticipated high demand for coal.

Now many of these same leasing boosters are before Congress asking that the only diligence requirement applying to more than 500 Federal coal leases be eviscerated. They cite the purported unfairness of this provision and the lack of demand for coal from these "old" leases to justify this outrageous proposal.

The Western Organization of Resource Councils is a coalition of four public interest groups: The Dakota Resource Council (North Dakota) ; the Powder River Basin Resource Council (Wyoming); the Northern Plains Resource Council (Montana) ; and the Western Colorado Congress (Colorado). Our 3500 member families are farmers, ranchers and other citizens from rural areas who are concerned about the effects of coal development on agriculture, the environment and the region's rural communities. Our members live and work in those areas of the West which bear the brunt of coal development and where federal coal leasing has a major impact on the future patterns and pace of coal development.

Our members are particularly concerned that coal development take place in a manner that does not disrupt the livelihood, lifestyles and homes of those who ranch and farm in the West.

One of the most shameful episodes in the history of Federal land management in the West occurred during the 1960's when the Department of Interior issued hundreds of dirt cheap competitive and questionable non-competitive coal leases. Many of these leases were located on operating farms and ranches. The surface owners received only the minimal protection afforded by the Stockraising Homestead Act of 1916.

While the amount of coal under lease skyrocketed, production of coal on Federal lands actually declined. It was readily apparent that speculators, taking advantage of low prices (no bonus was required for a for Preference Right Lease) and unenforced diligence provisions, were buying up Federal coal to wait for the day when they could reap windfall profits. Some of these Federal leases were later resold or assigned for millions and tens of millions of dollars, with the federal government and the taxpayer totally cut out from these profits.

The outcry over the first great coal leasing giveaway led to an administratively imposed leasing moratorium, that was not lifted until Congress had made major legislative changes in the Federal coal management program.

In 1976 and 1977, the Congress passed landmark legislation which profoundly changed the nature of coal mining in this country. The Surface Mining Control and Reclamation Act ("SMCRA") established much-needed environmental standards for strip mining. It also guaranteed that never again would a surface owner above Federal coal be subject to surface mining on his or her property without consent. Unfortunately, Section 714 of SMCRA did not apply to the already granted Federal coal leases.

Congress also addressed the problem created by the giving away of valuable mineral rights to speculators. The Federal Coal Leasing Act Amendments of 1976 ("FCLAA") established a simple and long overdue policy: federal coal resources could only be transferred out of the public domain for fair market value to purchasers who were willing and able to develop those resources within a reasonable time.

The requirement for the receipt of fair market value was one critical element of the attack on speculation. But the Congress realized that speculation could not be deterred unless leaseholders were required to produce coal within a reasonable time.

Three steps were taken to guarantee that Fedral coal would be held by companies willing to mine it to meet our energy problems, rather than speculators holding coal in anticipation of a windfall. Section 7 of FCLAA established a 10 year diligence requirement for all subsequently issued Federal leases. Concurrently promulgated regulations gave "old" leases, regardless of when initially issued, until June 1, 1986 to meet diligent development. Finally, Section 3 of FCLAA established a second dilgence requirement for old and new leases; forbidding any company which failed to develop a lease it had held for ten years (beginning in 1976) from receiving any other lease under the Mineral Leasing Act, e.g. coal, oil, gas, phosphate, sodium etc.

This sensible scheme to insure timely development of public energy resources is now under serious attack. Mr. Watt, acting on the flimsiest of pretenses has already removed one of the key diligence guarantors, revoking the regulations which required production by June 1, 1986 from old leases. Now the holders of these old leases are before the Congress crying that they are being unfairly treated by Section 3 of FCLAA.

Nothing could be farther from the truth.

What the holders of old leases seek is an opportunity to gain an unfair advantage over all other Federal coal lessees.

The average old lease was issued in 1967. The lessee paid less than .3 of a cent per ton. By 1986, these lessees will have had nearly twenty years to develop their holdings. Beginning in 1976, they were placed on notice that their leases would be cancelled in 1986 if they had not acheived diligent development.

Approximately half of the old leases will not be affected by Section 3. This is not surprising: demand for Western coal has increased dramatically in the last decade. Those lessees that do not acheive production by 1986 will have had adequate time to develop their leases. In many instances, lessees holding affected old leases also hold many producing leases. They have made a business decision to develop some leases and not others.

What they seek now is the ability to hang onto their old, cheap leases into the late 1990's. It is important to recognize that the old leases willl not be subject to diligence until long after many of the new leases. Thus the holder of an "average" 1967 lease in the Powder River Basin will have until 1997 to develop that lease if Section 3 does not apply. He will be competing against newer leases that have a ten year diligence period, that have paid a higher bonus, that must pay reasonable surface owner compensation, that may be subject to more demanding environmental lease terms and that may well have a higher royalty during most of this period.

Thirty years to develop a lease. There is no other term for this than speculation.

The holders of these old leases claim that the Section 3 prohibition against receiving any Mineral Leasing Act leases is unfair, that they are singled out. There is some truth to this. Similar prohibitions do not apply to oil and gas leaseholders. Their leases are automatically revoked at the end of a five year period without development. The old coal lease holders are (with the exception of oil shale lessees) the only persons allowed to retain Federal mineral leases without even a semblance of diligent development.

Lets not kid ourselves, the only real teeth in Section 3 is found in its prohibition against holding other, non-coal, leases. With the currently glutted coal market, these old lessees are unlikely to need any additional coal leases (nor is it clear that they are prohibited from buying up Federal coal leases from private holders). Those who would support a "compromise" limiting Section 3 to a ban on further coal leases might as well support complete repeal.

The old lease holders are much like the purchaser of a stock option. They did not buy the resource, only the right to develop it within a certain timeframe. If they chose not to do so, they lose their option. One can imagine the reaction of the normal seller of such an option if the buyer came and asked for a little more time, to wait until the market improved. No sane seller would approve such a transaction, nor should the federal government.

In closing, let me address what will happen should many of these leases be turned in in 1986 should the law remain in effect. Will people be put out of work? No, non-existent mines don't employ anyone. Will States lose revenues? No, the old lessees are paying a pittance in advance royalties. Will competition be diminished? Just the opposite, new entrants will no longer have to compete against unfairly privileged old lesses. Will areas lose future coal development prospects? Hardly. Clearing up the backlog of old leases will make it much easier to issue new leases. And to the extent that demand rises later in the 1990's, it can be met by coal from new leases. Leases issued for a fair bonus, with the mandatory royalty, after environmental screening and only when affected surface owners, if any, have consented.

The speculator may lose under such an arrangement, but everyone else -- the federal government, the States, new leaseholders, surface owners, those interested in environmental protection -- will be big winners.

We hope that this Committee will reject the importunings of coal speculators. The mistakes of the sixties were bad enough when perpetrated, they should not be continued one second longer than legally mandated.

Senator **Warner**. Mr. Webb, you've now joined us.

STATEMENT OF L. GEOFFREY WEBB, LEGISLATIVE REPRESENTATIVE, FRIENDS OF THE EARTH, WASHINGTON, D.C.

Mr. **Webb**. My apologies, sir.

Senator **Warner**. Please proceed.

Mr. **Webb**. Thank you Mr. Chairman for extending Friends of the Earth the opportunity to speak to you today on S. 2634, the Mineral Leasing Act, revision for diligent development section.

I have a written statement, Mr. Chairman——

Senator **Warner**. We'll put the entire statement in the record and if you'd be kind enough to summarize.

Mr. **Webb**. I'd be happy to do so.

Senator, you were just referring to the oil shale question which you worked so long and diligently on.

Senator **Warner**. Members of the Friends of the Earth were my escort committee when touring the various oil shale projects in the United States.

Mr. **Webb**. Yes, sir, we were. We've had a good working relationship with the chairman, with regard to the issues that have come before your subcommittee and we're not always on the same side but we appreciated your willingness to listen and have a good exchange of views on these subjects.

Senator **Warner**. Thank you, I have very high regard for the work product of your organization.

Mr. **Webb**. Thank you.

As you know, we've done a lot of work in all of these mineral leasing areas and a lot of the subjects that come before this committee and the full committee are quite complicated ones. The oil shale one for example is a very knotty problem, nuclear waste, or the natural gas decisions that you're facing right now, are quite difficult, complex, technical problems and they truly are knotty problems.

This one I don't put in that category. I think this is really quite a simple case, Mr. Chairman. And the case is that these companies have had leases for a long time, some of them going back as far as 1920. And Congress in 1976 tried to deal with the problems that it was facing with regard to the lease moratorium that had been posed by President Nixon because of all of those leases that were out in the market, weren't being developed, had no plans to be developed, and the public really had no control over its own resources. And so FCLAA really tried to attempt to deal with these problems of all those outstanding leases.

Before Congress had an opportunity to act, the Interior Department issued a regulation that said everybody who isn't being diligent has 10 years from right now to become diligent, and in doing so sort of, Congress thought that it didn't have to deal with the problem of those old leases, and in writing FCLAA was practive rather than retroactive, and wrote a diligence law that applied to future leases.

Well with the exception of section 3, of course, which said if anybody hadn't been in compliance then they wouldn't be able to obtain further leases until they relinquished their old ones.

I think Congress at that time didn't anticipate the future Secretary of the Interior would go back and change the contracts for all those old companies and in effect what Secretary Watt did last year was to unilaterally extend the terms of all of those contracts basically for free for a long period of time and with no additional requirements and no additional money for the taxpayers.

We feel that section 3 is a very important safeguarding provision of the law. Some said it's an inelegant provision that somehow it's not quite streamlined, that it offends legal esthetic sensibilities, that it doesn't quite, it doesn't apply to everything across the board. Somehow that anomaly should be repealed.

The problem is as my colleague, Mr. Masselli was just referring to, nobody else gets to keep their leases after they're not in diligence. We'd love to see that they get to play by the same rules as everybody else and have their leases automatically revoked. Then we wouldn't need a section 3.

The fact is, unfortunately, Congress didn't deal with that problem and the Secretary has been allowed to change the rules of the game and we think that it's quite appropriate to keep this provision of the law.

Last year the Los Angeles Times interviewed a gentleman by the name of Jack Schmidt, who was a consultant geologist for Energy Resources of Montana, and Mr. Schmidt at the time of the interview was at a mining conference, a conference of mine operators, and I'd like to just read you this one paragraph of what Mr. Schmidt and the industry people had to say about diligent development.

He said they were operating on the belief that the Federal Government would not enforce the diligence requirements. Quote, "We ran a survey and talked to a large number of operators. Their comments translated like this. 'The government will never take our mine away once we have it.' They see Interior losing more coal than anyone needs and they figure the Government is going along with this. Everybody understands the deal. Lease the coal now as fast as possible and hang onto it for as long as possible."

Mr. Chairman, the companies that are asking for the repeal of section 3 are the same companies when President Reagan was elected, that were saying it's time to run the Government like a business. We can't afford to be having all these welfare programs and handout programs. These are the same companies that said we've got to run a tight ship. You know, it's not Uncle Giveaway, Uncle Sam, and yet these are the same companies time after time that want special tax breaks. They want subsidies from the Synthetic Fuels Corp. They want new leases at rockbottom prices, below the price that they could possibly get from any private operator, and now they want to change the rules of the game and everybody gets to play by rules that were very clear when they were made 10 years ago. Senator, I just don't think that's right. So my complete statement is part of the record and you can refer to that.

They've had plenty of time to develop their leases and we believe that with 18 billion tons under lease, 17 billion of it still in the ground, companies that haven't developed their leases for 20 years, 30 years, 40 years, 50 years, if they're not going to develop their leases let's take them back and we'll release them and get their full value as taxpayers.

Thank you.

[The prepared statement of Mr. Webb follows:]

FRIENDS OF THE EARTH
530 7TH STREET, S.E., WASHINGTON, D.C. 20003
(202) 543-4312

STATEMENT OF L. GEOFFREY WEBB

LEGISLATIVE REPRESENTATIVE, FRIENDS OF THE EARTH

ON S. 1634, TO AMEND THE MINERAL LEASING ACT OF 1920

BEFORE THE SENATE ENERGY AND NATURAL RESOURCES SUBCOMMITTEE ON ENERGY AND MINERAL RESOURCES

HON. JOHN W. WARNER III, CHAIRMAN

Good morning, Mr. Chairman, and thank you for extending this opportunity to the members of Friends of the Earth to have their voices heard on this very important matter of diligent coal development and proposed changes in the law governing public coal contracts.

Friends of the Earth is a national environmental organization dedicated to the reponsible use, preservation and restoration of a clean and productive environment. We have a longstanding interest in the management of publicly-owned land and have been strong supporters of the evolution toward greater protection of environmental and taxpayers' interest in these matters.

Nearly three years ago Senator Henry Jackson, to whom thanks are owed and credit must be given for helping to guide that evolution, spoke to the new nominee for Secretary of the Interior, James Watt, about his trust responsibilities under law:

"...I am saying that that there are certain principles established by Congress which must be followed.

One, decisions based on land use planning, with ample public participation.

Two, maximum protection of the environment.

Three, receipt of fair market value for private use of public resources.

And, four, close cooperation with State and local governments, and local citizens."

We believe, of course, that the President's Interior Department has to date fallen far short of these principles, and we continue to endeavor to guide the President and his men back in the direction of these essential principles established by laws such as the National Environmental Policy Act of 1969 (NEPA), Federal Lands Policy and Management Act of 1976 (FLPMA) and the Federal Coal Leasing Amendments Act of 1977 (FCLAA).

Collectively, that body of legislation represents a certain maturity, a coming of age for public management of public resources. Real diligent development requirements, including Section 3 of FCLAA, are an integral component of responsible mineral leasing.

Mr. Chairman, we come before you today in opposition to S. 1634. We do not believe that a change of law in warranted at this time and would like to spend the remainder of our time today discussing our reasons for wanting to keep the law as it is.

First, and perhaps most importantly, the law shouldn't be changed because it makes sense. This law is designed to discourage the speculation which has been rampant on our public lands. In brief, companies have been able to obtain our coal for next to nothing, hold onto it for as long as they wanted, and sell the leases at highly inflated rates, giving no overriding bonus or royalty back to the owners of that coal, the public.

Section 3 of FCLAA, the provision at issue here today, is quite a modest provision. It doesn't prevent companies from reselling leases at huge profits. It doesn't even require the company to return the leases if they are not diligently developed. It simply says that until you return your non-diligent lease to the public, you will not be eligible for other mineral leases.

Some have said that it offends their aesthetic sense of the law or that it is somehow inequitable because this provision applies only to coal leases and not oil, or gas, or geothermal. To be perfectly honest, Mr. Chairman, it offends Friends of the Earth's aesthetic sensibilities along with our principles of equity that only coal lessees do not have their leases automatically revoked upon failure to develop diligently.

These companies have had more than enough time to develop their leases. Some are going to be developed, some aren't. Let's get the ones that aren't going to be developed back into the hands of the public. We should never forget who owns this coal, and on whose behalf it is supposed to be managed for. This coal, Senators, is owned by your constituents. The coal companies have gotten a great deal for 63 years, but the free ride is over. That's what FCLAA says, and that's what Section 3 begins to enforce.

The second reason this law should not be changed is that the problems with the coal industry have nothing to do with Federal involvement, publicly-owned coal, or Section 3. The fact of the matter is that the coal industry does not need new tax breaks, a reduction of inspectors at their mines, weaker pollution laws, more leases, or the repeal of Section 3. The reason the industry is in a slump is the severe recession we have been through, and what the coal industry needs is what the rest of the country needs: a strong economic recovery.

The coal industry is not part of a special, privileged class deserving of special handouts. Sometimes it seems that the old handouts weren't good enough, that having grown accustomed to preferential treatment, they deserve new handouts as well. First it was more leases in a depressed market. Now they say they can't develop what they have and want the rules changed especially for them.

It wasn't long ago that these companies, individually and as part of industry lobbying groups, were saying that America had gone astray. That government could no longer afford to be fiscally irresponsible, that welfare programs had to be cut, that we had to start running the government like a business, that the free market must be allowed to work. These companies spent millions of dollars in the 1980 election on behalf of these principles.

And what have we seen? An unending succession of outstretched palms. They wanted special tax breaks, they wanted cheap Federal land, they wanted direct subsidies from the Synthetic Fuels Corporation, now they want to change the rules so they can continue to speculate unpenalized, so they can hold on to leases which ought to be revoked and get new ones at the same time. Mr. Chairman, the time has come to collect the bill before accepting the next order.

Private industry would laugh at anyone making the demands of them that the coal industry asks of the public. Companies don't change their contracts so another party can make a lot of money while they get nothing. The credibility of the government is at stake. Already, the industry thinks that because it has never lost a lease, it never will. The results of a survey taken at a conference of mine operators last year were reported in the Los Angeles Times:

"The government will never take our mine away once we have it. (Private operators) see Interior leasing more coal than anyone needs and they figure the government is going along with this. Everybody understands the deal: lease the coal now, as fast as possible, and hang on to it for as long as possible." (July 28, 1982)

It is time for Uncle Sam to take a firm stand against the endless, petulant demands of an industry grown accustomed to having its way. If companies are worried about not being able to bid on new leases, an easy solution is at hand: give the old ones back.

Senator WARNER. Thank you gentlemen. I thank you very much for your valuable contribution to this hearing.

If there are no further witnesses, the hearing is adjourned.

[Whereupon, at 12:40 p.m., the hearing was adjourned.]

APPENDIX

Responses to Additional Questions

JAMES A. MC CLURE, IDAHO, CHAIRMAN
MARK O. HATFIELD, OREG.
LOWELL P. WEICKER, JR., CONN
PETE V. DOMENICI, N. MEX.
MALCOLM WALLOP, WYO.
JOHN W. WARNER, VA.
FRANK H. MURKOWSKI, ALASKA
DON NICKLES, OKLA.
CHIC HECHT, NEV.
JOHN H. CHAFEE, R.I.
JOHN HEINZ, PA.
J. BENNETT JOHNSTON, LA.
HENRY M. JACKSON, WASH.
DALE BUMPERS, ARK.
WENDELL H. FORD, KY.
HOWARD M. METZENBAUM, OHIO
SPARK M. MATSUNAGA, HAWAII
JOHN MELCHER, MONT.
PAUL E. TSONGAS, MASS.
BILL BRADLEY, N.J.

MICHAEL D. HATHAWAY, STAFF DIRECTOR
CHARLES A. TRABANDT, CHIEF COUNSEL
D. MICHAEL HARVEY, CHIEF COUNSEL FOR THE MINORITY

United States Senate
COMMITTEE ON
ENERGY AND NATURAL RESOURCES
WASHINGTON, D.C. 20510

October 19, 1983

Honorable J. Steven Griles
Deputy Assistant Secretary for Land and Water
U.S. Department of the Interior
18th and C Street, N.W.
Washington, D.C. 20240

Dear ~~Mr. Griles:~~ Steve:

The following questions were developed following the Subcommittee's hearing on S. 1634 on October 18, 1983:

1. The Department's 1982 Federal Coal Management Report, refers to "the long lead times necessary to begin coal development in the West and the need to maintain competition for coal supply contracts."

   (a) What is your definition of "long lead time"? Does the Department have data based on the existence of actual producing mines which show that "long lead times" are necessary? Also, do you have data which support your conclusion that the 10-year production requirement for Federal coal leases may be too short?

   (b) How many proposed mines would you estimate suffer from too little time in which to develop their reserves? Please provide us with a list of these mines.

2. DOI's July 1982 coal leasing regulations redefined the term "logical mining unit." In view of your redefinition of an LMU, do you believe that deletion of the requirement that lands in an LMU be contiguous, provided for in section 3 of S. 1634, is necessary, and if so, why?

3. How do the provisions of S. 1634 conform to Interior's most recent set of coal leasing regulations?

4. DOI has in the past stated that bonus bids affect the price of the coal produced from the lease. Do you believe this to be true? If so, why? Would not oil prices at the time of coal production largely determine coal prices?

5. In a bona fide market transaction with an unaffiliated mining concern that is terminating its mining business, a company acquires an undeveloped pre-1976 Federal coal lease by assignment approved by DOI. Is the 10-year period referred to in the first sentence of section 201 (a) (2)(A) of Title 30, United States Code, computed with respect to the acquiring company as beginning on the date when DOI approved the assignment to that company?

Your prompt response to the above questions will be appreciated.

Sincerely,

John Warner

John W. Warner
Chairman, Subcommittee on
Energy and Mineral Resources

JWW:BT:bn

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

Honorable John W. Warner
Chairman, Subcommittee on Energy
and Mineral Resources
Committee on Energy and Natural
Resources
United States Senate
Washington, D.C. 20510

DEC 2 1983

Dear Senator Warner:

Thank you for your letter of October 19, 1983, in which you requested our response to questions developed by the subcommittee on Energy and Mineral Resources following the hearing on October 18, 1983. Our responses to the questions are numbered to match the numbers of the questions.

1(a). We define "long lead time" to be 8 to 15 years. The length of time depends on the type of operation contemplated, the time needed for gathering of background data to develop and submit a permit application, for the development of required environmental documentation and granting of the permit approval, plus the 2 to 3 years that may be required for development of facilities prior to the first production of the Federal coal. Experience in the field has shown that there may be a 7 to 10-year startup time from the time of lease issuance to production. This is because prior to getting a utility contract for coal, the company must obtain reserves which requires getting a lease. Following this, a drilling program must be developed and implemented that will precisely identify the location and physical characteristics of the coal prior to the purchase of mining equipment. Such drilling programs and analyses of the data commonly take 2 to 3 years.

At this time and, under current law, it may take 6 months to prepare a plan and another 6 months to 1 year to obtain its approval. This timeframe is usually insufficient to acquire background data (e.g., hydrologic data) for submittal of a permit application pursuant to the Surface Mining Control and Reclamation Act (SMRCA). It usually requires about 5 years from lease issuance to acquire these data and develop the permit application. Since this additional information usually increases our knowledge about the coal, the result is that the 3-year plan required by the Mineral Leasing Act (MLA) must be revised at the time of the submission of the permit application.

The Federal Government must then take the application and develop environmental documentation for the operation. During this review, the plan may have to be changed based on environmental constraints (e.g., alluvial valley floors). It usually takes 2 to 3 years to complete the environmental documentation and approve the MLA

3-year plan and SMCRA permit. This puts the operation in year 8 of the 10 years within which production in commercial quantities must be achieved. Upon lessee's receipt of approval, the operator may begin mine development (access roads, surface structures, rail spurs, and site preparation, among others). This must be done in order to begin initial production leading toward full-scale production, and may take 1 to 2 years.

For synfuels projects, facility construction alone may require 3 to 5 years. However, by law, the lease would automatically have been terminated at the end of the tenth year for failure to produce commercial quantities. The enclosed charts and list of selected references support this discussion (source: Colorado School of Mines).

1(b). A detailed analysis of all coal leases contained in pending mine plans would be required in order to analyze on a mine-by-mine basis the geological, geophysical, and environmental peculiarities that would result in the timeframes mentioned in our response to question 1(a) above. Such an in-depth study would be time consuming and difficult to prepare. No matter how carefully prepared, it would be highly speculative and unreliable because it would involve second-guessing coal operators.

2. The redefinition of logical mining unit in the 1982 regulations contains the "contiguous" requirement only because it is currently required by the Mineral Leasing Act. The redefinition does not solve the problems inherent in implementing contiguity in the LMU concept.

We believe that deletion of the requirement that LMU's be contiguous is necessary. The contiguity requirement ignores geologic realities and surface/coal ownership patterns. For example, an individual lease may contain tracts that are widely separated by non-Federal surface and/or non-Federal coal (e.g., Knife River Coal Company Federal coal lease in North Dakota). Assuming the operator has some, but not all, of the surface or non-Federal coal between the lease tracts, and assuming all the coal that the operator has a right to mine is going to the same market, the operator could not form an LMU as all lands would not be contiguous. Yet the operator would be in full compliance with the requirement that "all lands . . . must be under the effective control of a single operator, and be able to be developed as a single operation." The "effective control" and "single operation" are sufficiently restrictive for LMU formation in that there is necessarily a limit on the amount of land that could be covered by a "single operation." Otherwise, an operator could attempt to put all its leases in an LMU, as long as the statutory maximum of 25,000 acres would not be exceeded. We believe that the contiguity requirement is unnecessarily burdensome and that the LMU concept can be addressed solely in regulations by using the restrictive "effective control" and "single operation" requirements and we believe that the restrictive "contiguous" requirement should be deleted from the Act.

3. The July 30, 1982, rules conformed to requirements of the Federal Coal Leasing Amendments Act of 1976 for the Section 3 prohibition, the LMU contiguity requirement, and the 3-year timeframe within which to submit on "operation and reclamation plan" (resource recovery and protection plan under the 1982 rules). If the provisions of S.1634, as currently written, are enacted, the rules would have to be revised accordingly. However, under our phase 3 streamlining of those rules, the changes could be made at the same time that we revise the regulations to eliminate unnecessary, burdensome, and counterproductive provisions. This phase 3 effort will also consider the Coal Fair Market Value Commission's forthcoming recommendations.

4. There are sundry factors that may affect the price of coal as a product of the interaction of the supply and demand forces. On the supply side, bonus bids may be of some consequence. However, in a majority of instances, bonus costs are but a very small component of total costs, and as such it may not be possible to empirically confirm a statistically significant relationship between bonus bids and the price of coal. This is certainly true for large aggregates such as coal prices nationally or by some large regional configuration. For some individual coal deposits where there is minimal transportation and coal is used at mine mouth, there is some greater possibility for a direct linkage to price, although even in this situation the direction of the cause and effect linkage may still be a question as it can be argued that price is largely due to other factors and this will determine the range of bonus bids that a company can make and still derive a profit. One dramatic example of this would be the extremes of a protracted cyclical downturn in delivery prices which leads to associated reductions in revenues and thus cash reserves available to support bonus bids at certain levels. Thus, while it must be theoretically accepted as a tautology that there is a relationship between bonus bids and prices, the role of bonus bids as a determinant of prices is sure to be minimal in most cases and usually so small as to not be quantifiable.

With regard to the linkage of coal prices to oil prices the observation would be similar. Certainly all fossil fuels are conceptually and technically substitutes for each other, and thus part of the decision to substitutes would be the comparative prices. Institutional rigidity precludes this substitution in any magnitude, however, as oil is used primarily in the production of gasoline and coal primarily for the production of electrical energy. Large scale capital conversion is required to shift that utilization pattern, and this would not take place except in the presence of substained shifts in comparative prices. There is no evidence of any substantial interaction between oil and coal prices in any shorter time period, such as the actual of time production.

5. The 10-year period is computed with respect to the acquiring company as beginning on the date that DOI approves the 100 percent, arm's-length assignment. For example, assume a Federal coal lease was issued to lessee A on April 1, 1963, and there has been no production from that lease. Assume also that this is the only Federal coal lease that lessee A holds. On July 1, 1985, lessee A assigns 100 percent interest in that lease to lessee B and this lease is the only Federal coal lease that lessee B holds. Lessee B then wants to qualify for a forthcoming Federal lease issuance on September 1, 1989. Since lessee B has only held this nonproducing lease for 4 years and 2 months, lessee B does not have any problem with the Section 3 prohibition of holding such a lease for 10 years. Lessee A also qualifies for the Federal lease issuance as the lease was the only Federal coal lease that lessee A had held prior to the assignment. This is due to the dual requirement of Section 3 which states, in part "holds . . . and has held." (emphasis added) Since lessee A would no longer hold the lease, the "has held" provision of Section 3 is not a factor at the time that qualifications for a new Federal lease issuance are being determined. Note, however, that lessee B has acquired a lease that was readjusted on April 1, 1983 (under the standard 20-year readjustment cycle), and the lessee is subject to the 10-year diligence requirements of Section 7 of the Federal Coal Leasing Amendments Act of 1976. If lessee B has not produced coal in commercial quantities by April 1, 1993, he loses the lease. Under no circumstances will a lease assignment affect Section 7 diligence which is applicable to all post-1976 leases and to all pre-1976 leases upon readjustment.

Thank you for the opportunity to comment on these issues. If we can be of any further assistance, please feel free to contact us.

Sincerely,

Leona Power
Leona Power
Legislative Counsel

Enclosures

  - covering coal and acid-and toxic-forming materials
  - thin overburden
  - thick overburden
- *Regrading or stabilizing rills and gullies*
- Revegetation
  - use of introduced species
  - timing
  - mulching and other soil stabilizing practices
  - grazing
  - standards for success
  - tree and shrub stocking for forest land
- Cessation of operations (temporary & permanent)
- Postmining land use
- Roads (Class I, II, & III)
  - location
  - design and construction
  - drainage
  - surfacing
  - maintenance
  - restoration

VI. SUMMARY - MAJOR STEPS IN SURFACE MINE DEVELOPMENT

A. Assembly of a Mineable Coal Package

1. Lease acquisition

2. Mapping the area

3. Drilling program development

4. Surface drilling rights acquisition

5. Drilling, sampling, logging, analysis
6. Mineral evaluation (determination of commercial quantities present)
7. Drilling on closer centers (development drilling)
8. Sampling, logging, analysis
9. Surface acquisition

B. Market Development

1. Market survey
2. Potential customer identification
3. Letter of intent to develop and supply
4. Contract negotiation

C. Environmental and Related Studies

1. Initial reconnaissance
2. Scope of work development
3. Consultant selection
4. Implementation
5. Environmental impact report
6. Environmental monitoring

D. Preliminary Design, Machine Ordering

1. Conceptual mining development
2. Economic size determination
3. Mining system design, layout and development
4. Equipment selection
5. Stripping machine ordering
6. Mine plan development

E. NEPA Process (National Environmental Policy Act of 1969)

   1. Identification of lead agency for EIS
   2. Draft EIS
   3. EIS review and comments
   4. EIS hearing and record
   5. Federal EIS review
   6. CEQ filing
   7. Mining, and/or reclamation plan approval

F. Permits

   1. State water well and rights appropriation permits
   2. State special use permit - such as a reservoir
   3. State mining permit
   4. State industrial siting permit
   5. Federal NPDES permit
   6. Federal forest service special land use permit

G. Design and Construction

   1. Preliminary design and estimation
   2. Material ordering and contracting
   3. Water well development
   4. Access roads and site preparation
   5. Railroad construction
   6. Power supply installation
   7. Facilities and coal handling construction
   8. Warehouse building and yards
   9. Coal preparation and loading facilities construction
   10. Overland conveyor construction

H. Mining Preparation

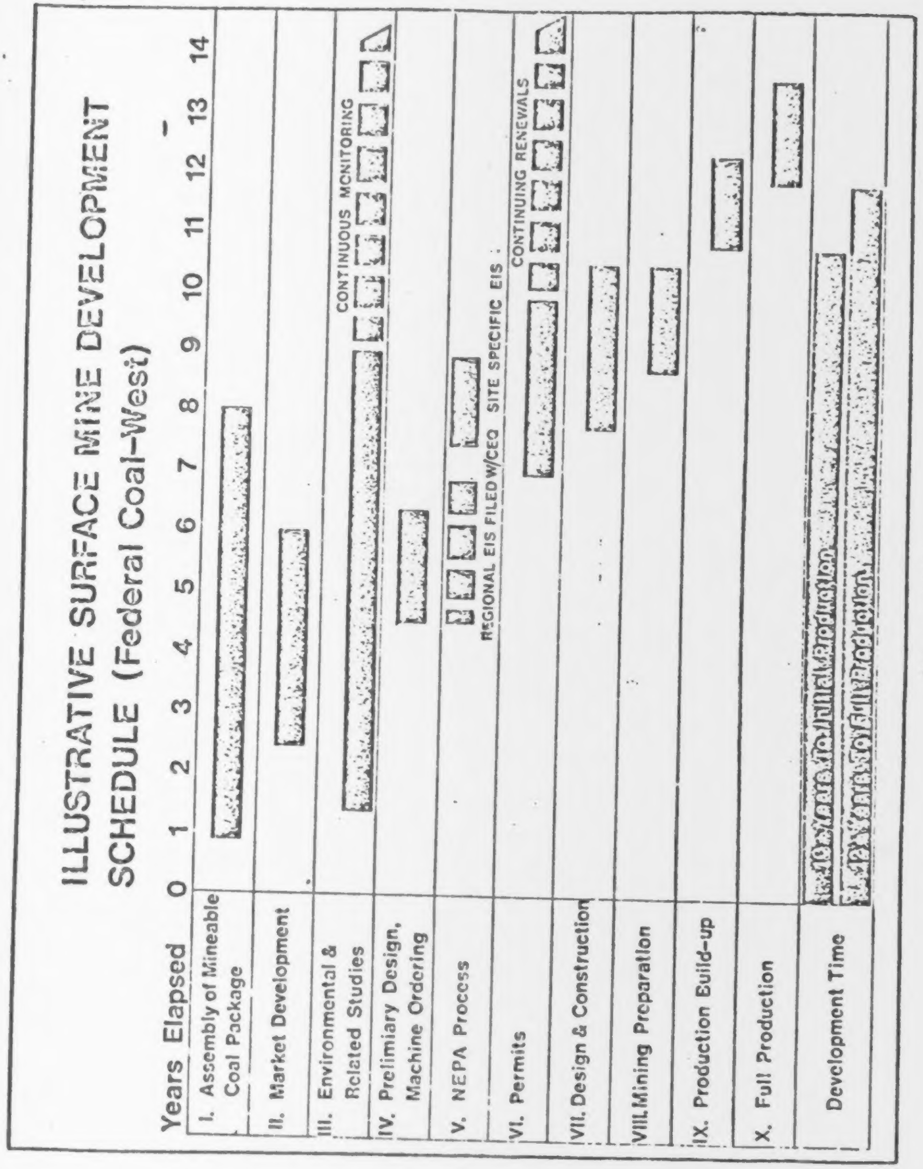
  1. Stripping machine(s) erection
  2. Loader erection
  3. Support equipment readying
  4. Manpower recruitment and training

I. Production Buildup

J. Full Production

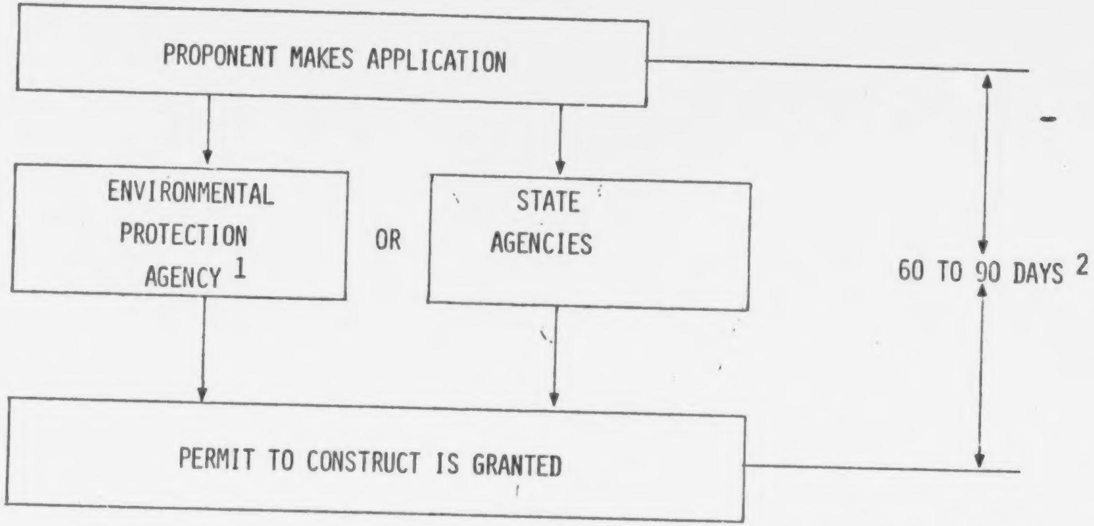
These ten steps and associated timing estimates are illustrated in the following figure which was taken from Jones (1977).

Figures on the following pages represent estimated time required for obtaining environmental permits where federal lands are and are not involved. (Tipton, 1978)



ILLUSTRATIVE SURFACE MINE DEVELOPMENT SCHEDULE (Federal Coal-West)

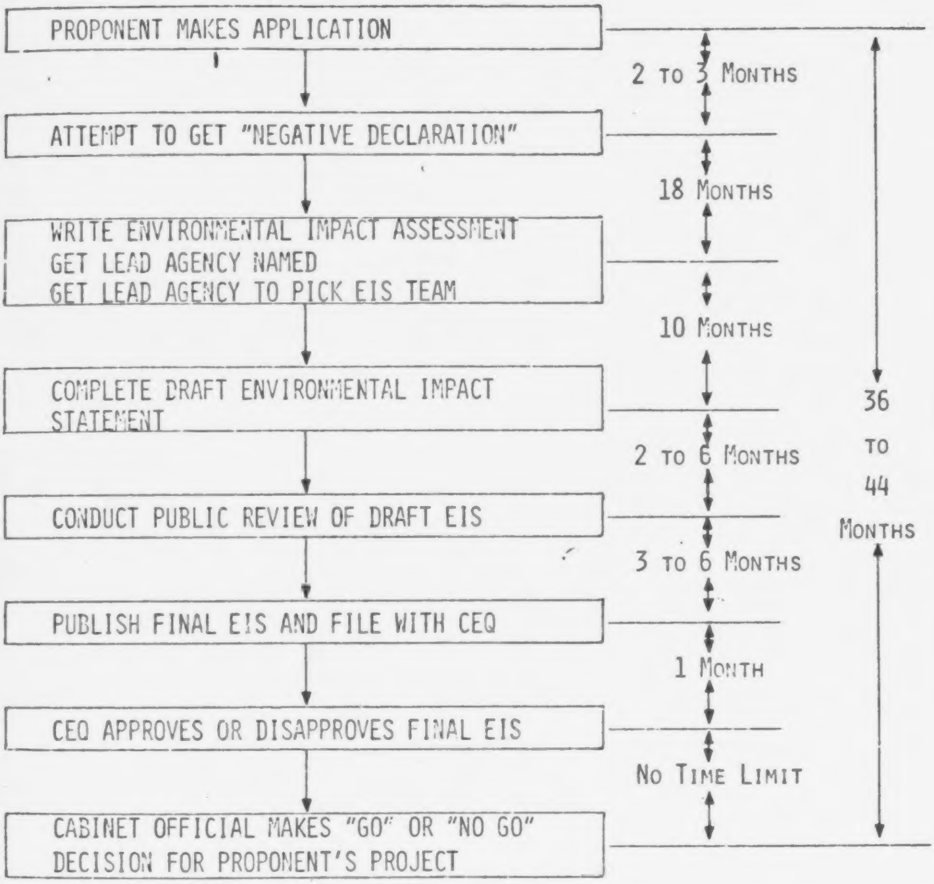
(Jones, 1977)


PROPONENT MAKES APPLICATION
ENVIRONMENTAL PROTECTION AGENCY 1
OR
STATE AGENCIES
PERMIT TO CONSTRUCT IS GRANTED
60 TO 90 DAYS 2

Time required to get environmental permits if proponent owns the site and no federal rights-of-way are involved.

[1] The Environmental Protection Agency may decide to write an environmental impact statment.

[2] Time could be longer if proponent's application is incomplete.


PROPONENT MAKES APPLICATION
ATTEMPT TO GET "NEGATIVE DECLARATION"
WRITE ENVIRONMENTAL IMPACT ASSESSMENT
GET LEAD AGENCY NAMED
GET LEAD AGENCY TO PICK EIS TEAM
COMPLETE DRAFT ENVIRONMENTAL IMPACT STATEMENT
CONDUCT PUBLIC REVIEW OF DRAFT EIS
PUBLISH FINAL EIS AND FILE WITH CEQ
CEQ APPROVES OR DISAPPROVES FINAL EIS
CABINET OFFICIAL MAKES "GO" OR "NO GO" DECISION FOR PROPONENT'S PROJECT
2 TO 3 MONTHS
18 MONTHS
10 MONTHS
2 TO 6 MONTHS
3 TO 6 MONTHS
1 MONTH
NO TIME LIMIT
36 TO 44 MONTHS

Time required to get environmental permits if federal lands for involved.

(Tipton, 1978)

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Enclosure 2

Report No. 83-169 ENR

A HISTORY AND ECONOMIC ANALYSIS OF FEDERAL COAL LEASING POLICY

by
Duane A. Thompson
Analyst in Coal Policy
Environment and Natural Resources Policy Division
and
Dennis Zimmerman
Specialist in Public Finance
Economics Division

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September 2, 1983

HD 9546 U.S.

ABSTRACT

This report details the history of the various legislative and regulatory provisions which compose Federal coal leasing policy and studies their potential economic effects. The analysis suggests that Federal policy affects not only whether bonus bids for Federal coal reserves reflect their fair market value, but also whether Federal reserves are being developed in a manner designed to eliminate potential monopoly rents and achieve an efficient market price for coal. It is noted that achieving an efficient price for coal is not always consistent with maximizing the bonus bid received by the Federal Government.

begun, and hearings have been scheduled. The commission's task will be a challenging one because of the complexities of improving a process which cannot draw upon a long history of prior experience.

In this report, Duane Thompson and Dennis Zimmerman review the efforts of the past 15 years to develop an effective coal leasing management plan, and identify and discuss the difficulties that have emerged. Of particular importance at this moment of concern in Congress is the examination of the various elements of the leasing process. The timing of new coal capacity to meet consumer needs, the response of lessees to the diligence requirements and uncertainty, the desire to facilitate conservation and environmental values, the eventual market price of produced coal, and the bonus and royalty incomes generated are all important considerations. In their examination of the leasing process, the authors show that responsible coal land management in the public interest requires going beyond concern for single facets of policy such as size and number of bonus bids; those are only parts of a multi-faceted resource system. Moreover, decisions on one aspect of coal leasing or production can frequently counter the effect of other strategies or exaggerate the resulting consequences.

This report is intended to provide Congress with a timely and concise description of the various elements of coal leasing mechanics and policy, and insights as to their characteristics.

PREFACE*

Western coal production, which was a minor local activity 30 years ago, and not too significant as recently as 1970, has now reached 30 percent of national output. The role of coal from the public lands and the manner in which it is leased to potential producers has moved from a matter of little consequence to an issue commanding considerable attention. Procedures and objectives for coal leasing policy have appeared and then been altered. Moratoriums have been declared, and there has been a continuous debate about both process and objectives.

One recent event in this sequence was the report by the House Committee on Interior and Insular Affairs of a resolution that an emergency exists and the recommendation that coal leasing activity be suspended for the duration of that emergency. Concurrently, the Department of Interior has announced an intent to hold a coal lease sale in September 1983, involving the coal fields of Montana and North Dakota, and proposes additional sales in late 1983 and 1984. Also, in August, a congressional conference committee was involved in arriving at an agreement on Interior's supplemental appropriation for fiscal 1983; inincluded in the conference committee's report was the recommendation that a special commission be established to examine Interior's coal leasing activities.

It appears that both the Department of the Interior and the Congress favor such a commission; and a five-member commission has been selected, staffing has

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SUMMARY

If the coal and capital markets functioned competitively with perfect information, the Federal Government would not need to be overly concerned about its coal leasing policy. The Government would stand ready to lease in a competitive bidding process as many coal reserves as desired by private industry. The proper amount of Federal reserves would be leased to ensure attainment of the efficient coal supply, and the bonus bids for these reserves would be a fair market value for the development rights to the reserves.

However, these ideal conditions differ greatly from actual circumstances. As a consequence, Federal coal leasing policy has been in turmoil since the late 1960s. The recommendations contained in the Department of Interior's assorted coal planning documents and the changes mandated by the Federal Coal Leasing Amendments Act of 1975 represent the Federal Government's efforts to reconcile its leasing policy to the fact that the coal and capital markets do not always function with perfect information.

This report describes the history and potential economic effects of the various legislative and regulatory provisions which compose Federal leasing policy. The analysis demonstrates that Federal policy affects not only whether bonus bids for Federal coal reserves reflect their fair market value, but also whether Federal reserves are being developed in a manner designed to eliminate potential monopoly rents and achieve an efficient market price for coal. It is noted that achieving an efficient price for coal is not always consistent with maximizing the bonus bid received by the Federal Government.

It is anticipated that the Congress will continue to examine actively progress in the evolution of coal leasing to see if, on balance, the policy is moving in a direction of achieving a net economic gain. The fair market value issue and the difficult problem of its determination were explored in the recent reports by the General Accounting Office and the House Subcommittee on Surveys and Investigations. These reports focused in particular on how Federal leasing procedures may have lowered the return from bonus bids but the analysis did not extend to the impact of leasing on other aspects of coal markets. The thrust of this CRS study of the problem is to extend the analysis to market price behavior and other matters of concern.

If low-cost Federal reserves continue to be leased in order to gain for the Nation some of the benefits from an efficient market price for coal, it may not be possible to also maximize bonus bids at each lease sale. However, all possible effort should be made to establish bidding procedures (particularly on maintenance tracts) which have a reasonable prospect of eliciting bonus bids that fall within what is considered to be an acceptable range of fair market values. Even if the bidding procedures are not perfectly competitive in every case, it is conceivable that any resulting losses in bonus bids could be compensated for by the benefits to the Nation gained from seeking an efficient market price for the coal that is produced by the U.S. coal industry.

The major elements of the analysis which leads to these conclusions can be summarized as follows:

—Even if the tonnage of Federal reserves already under lease appears to be adequate to meet expected market requirements, additional reserves could be beneficially leased, provided their production costs are lower than the costs of some reserves currently being developed.

—Added leasing is a desired policy if one of the Government's primary objectives is to avoid the possibility of providing insufficient amounts of Federal coal in order to bring coal prices to an efficient level.

—A policy of assuring adequate leasing of lower-cost Federal reserves would reduce the possibility that monopoly rents (and bonus bids) would be earned by Government and private resource owners for production of higher-cost reserves. This illustrates that a leasing policy which satisfies the public interest is not always consistent with maximizing the bonus bid on any particular Federal reserve.

—The level of leasing appropriate for this purpose requires careful study. The following work to reduce the value of Federal coal to society if leasing is mismanaged: possible differences between public and private discount rates; inadequate competition for leases, due to capital market conditions; problems with the formation of efficient mine size; and the mismeasurement of social costs. The first two may also reduce bonus bids for Federal coal reserves.

—Given an aggressive leasing strategy, diligence requirements (in the presence of uncertainty) can cause developers to plan production earlier and may reduce bonus bids and market prices.

—A royalty payment functioning as a cost to the lessee can delay production and reduce bonus bids, and may raise market prices. Given that royalty [illegible]
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A HISTORY [illegible]

1. INTRODUCTION

Federal coal leasing policy is in an [illegible] state. [illegible] processes and the legislative framework [illegible] to [illegible]. This report examines the [illegible] of coal leasing, which [illegible] occupy a more important role in American [illegible]. The [illegible] attempt to contribute to the further refinement of legislation and administrative procedures regarding coal leasing.

Federal coal leasing policy has [illegible] considerably over the [illegible] decades. Almost no restrictions [illegible] the ability of [illegible] to lease Federal coal reserves in the 1960s. Western coal [illegible], as it had been, a minor element in national coal supply. The Government's role in coal leasing was almost purely a response to the rather [illegible] number of applications for lease tracts by private developers. Furthermore, little attention was paid by the Government to the adequacy of the payments [illegible] of Federal coal. This apparent lack of interest in the price and [illegible] Federal coal reserves being leased was perhaps understandable during a time of low-priced, abundant supplies of oil, and a steady erosion of coal's share of the energy market.

This policy of "benign neglect" was recognized and reversed in the 1970s. The [illegible] oil, [illegible] environmental concerns, and growing awareness of the potential market importance of Federal coal reserves all combined to focus attention on the amount of Federal coal reserves being leased and the prices being paid for the development rights conferred by the leases. Accordingly, the Department of the Interior, in 1971, imposed a moratorium on new Federal coal leasing while it assessed the effect of past leasing and established a new and comprehensive leasing program to serve the public's best interest.

This evaluation resulted in a new leasing program and a quick revision: the Energy Minerals Allocation Recommendation System (EMARS-I) and the Energy Minerals Activity Recommendation System (EMARS-II), respectively. These programs focused on the management of Federal coal reserves to achieve national energy objectives. Although many issues were addressed, the central objective was to create a leasing policy which would meet coal production goals at "fair prices" but which would, in the process, also protect the environment. Put differently, the central questions were two: How much coal should be leased, and how the developer's payments for the development rights conveyed by the lease should be determined.

The Federal Coal Leasing Amendments Act (FCLAA) of 1975 addressed the concern of the Congress with these issues. The Act required the Federal Government to make major adjustments in its coal leasing policy, four of which were: institute a land reclamation plan, restructure royalty payments, abolish preference rights leases and use exclusively a competitive bidding system, and enforce a 10-year diligent development requirement (a post-lease time deadline for commercial production). Since the passage of this Act, the Department of the Interior has been in the process of promulgating regulations to implement these requirements. The initial regulations and their subsequent revisions have generated considerable controversy and have been attacked by both industry and environmental lobbies as being inconsistent with the legislative requirements set forth in the Act.

The Reagan Administration has terminated the 1971-81 moratorium on new long-term leasing of Federal coal reserves and commenced lease sales in the Powder River Basin of Wyoming. These sales have also generated considerable controversy. Both the House Subcommittee on Surveys and Investigations of the House Committee on Appropriations and the General Accounting Office (GAO) have recently issued reports critical of these sales. 1/ The economic aspects of the criticism concern the price being paid by private industry for the development rights, and the effect of these Federal reserves on the market price for coal. The Administration claims that the Government received a fair return on its coal and that the likely effects upon coal prices are consistent with an efficient coal market. The House Subcommittee and the GAO maintain that a fair return was not received, and the House Subcommittee also suggests that the effects on coal prices are not consistent with an efficient coal market.

At this point in the 2-decade-long odyssey of Federal coal policy, the focus of attention is now on leasing policy's effect upon (1) the return from the sale of the development rights to Federal coal relative to its fair market value, and (2) the quantity of coal produced and the market price received therefrom. It is important to sort out the relative merits of these conflicting claims concerning

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1/ House Subcommittee on Surveys and Investigations Committee on Appropriations. A Report to the Committee on Appropriations, U.S. House of Representatives, on the Coal Leasing Program of the U.S. Department of Interior. April 1983.

General Accounting Office. Analysis of the Powder River Basin Federal Coal Lease Sale: Economic Valuation Improvements and Legislative Changes Needed. GAO/RCED-83-119, May 11, 1983.

the effect of current Administration leasing policy on both the price of coal and coal leases. The purpose of this report is to assist the Congress in this sorting-out process by discussing the elements of a socially efficient coal management policy and describing how EMARS, FCLAA, and the associated regulatory changes are likely to affect this policy.

Chapter II describes the efficient or optimal leasing strategy in a world of competitive coal and capital markets with perfect knowledge. Many of the conditions necessary for this efficient leasing strategy to hold are not, however, met by current circumstances. The recommendations contained in the Department of Interior's EMARS documents and the changes mandated by the FCLAA can be viewed as the Government's efforts to adjust its leasing policy to the fact that the participants in coal and capital markets lack perfect knowledge. From this perspective, Chapter III describes the history of Federal coal leasing policy from 1960 until the present. Substantial attention is devoted to the major recommendations and provisions of the EMARS and the FCLAA of 1975. Chapter IV discusses how these deviations from competitive coal and capital markets with perfect knowledge and the Government's efforts to correct for these deviations affect the fair market value of coal development rights and the market price and quantity of coal. Chapter V summarizes the policy implications of this report's analysis.

II. LEASING POLICY WITH COMPETITIVE MARKETS AND PERFECT KNOWLEDGE

In order to understand the difficulties confronting the formulators of Federal coal-leasing policy, it is useful to discuss what that policy would be, absent the complications present in existing coal and capital markets. Accordingly, this chapter discusses leasing policy in a world of competitive markets with perfect knowledge.

Although the literature on coal leasing identifies numerous policy "goals," most of these goals could be achieved simultaneously, given the efficient or optimal extraction of the resource. 2/ The private producer's decision concerning the best time to exploit his coal reserves is subject to two conflicting forces. The gradual depletion of society's coal reserves—if we progress from those with the lowest mining cost to those with the highest—can be expected to require the market price of coal to rise over time. Delaying production, therefore, means that an individual producer might receive a higher price for the coal. However, delaying production also means that his receipt of revenues from sale of that coal is delayed, so that the present value of each dollar of revenue (that is, revenue adjusted by his appropriate discount rate) is reduced. The producer will be inclined to exploit his reserves in those years which will maximize the present value of future revenues, at a point at which the two conflicting effects just offset each other.

This requires that the present value from reserves of similar quality produced in different years should be equal; otherwise the producer could increase

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2/ These goals are enumerated in: Department of Interior. Federal Coal Management Program. Final Report and Recommendations for the Secretary on Fair Market Value and Minimum Acceptable Bids for Federal Coal Leases. December 1979. p. I-1.

his total returns by some shifting of production from low-return years to high-return years. This also means that coal should be exploited at a rate such that the difference between price and cost (that is, the economic rent) increases at a rate equal to the discount rate (for that would make the present value of economic rent invariant over time). In a world of perfect knowledge, this optimal depletion strategy for the private producer will also be optimal for society as a whole. 3/

It takes time to develop coal reserves from the time of leasing to the point of commercial production. If, for example, to begin production, 5 years are required from the time coal reserves are leased from resource owners, then the Government's leasing stipulations must allow for the development period. It should, therefore, be understood in the discussions which follow that an optimal production strategy for coal allows for leasing to precede production by a number of years.

The following conditions would prevail in competitive coal and capital markets with perfect knowledge:

(1) Many coal producers would exist, such that each could sell as much coal as desired without affecting the price of coal.

(2) No owner of coal resources would hold reserves sufficient to affect market price, or owners would choose not to exercise their control if such market power existed.

3/ The economics of natural resource depletion are developed in: Hotelling, H. The Economics of Exhaustible Resources. Journal of Political Economy, v. 39, April 1931, p. 137-175. And: Weinstein, Milton C. and Richard J. Zeckhauser. The Optimal Consumption of Depletable Natural Resources. Quarterly Journal of Economics, August 1975, p. 371-392.

(3) The future costs of coal extraction would be known with certainty. All reserves would be identified, and the cost characteristics of all reserves would be known.

(4) The future price of coal, and therefore the quantities of coal that would be purchased in the market, would be known.

(5) All social costs, such as environmental damage, are known and included in the cost of production.

(6) No imperfections would exist in the capital markets, and the private and public rates of time preference (discount rates) would be equal.

Given these conditions, and with no impediments to the formation of coal reserves from different owners into efficient production units (known as Logical Mining Units or LMUs), the Federal Government could achieve its depletion objective by standing ready to lease those coal reserves desired by developers. The presence of many potential developers would ensure competition for each lease and insure that the Government received fair market value for the reserves.

> . . . social welfare maximization occurs at the point of competitive equilibrium of national coal supply and demand. At this point, the greatest amount of coal will be produced at the lowest possible cost and the contract price for coal will equal its production cost plus a minimal, competitively-determined rate of return on the capital invested in coal production. 4/

Most potential bidders for reserves would calculate their bids from a discounted cash flow (DCF) analysis, which sums the present value (PV) of the future stream of net revenues generated by expected sales of coal from the reserves.

4/ Department of Interior, Federal Coal Management Program, p. II-8.

$$PV = -I_o + \sum_{t=1}^{n} \frac{R-C}{(1+i)^t}$$

Where:	I	is the capital invested in producing coal
	R	is the revenue from the sale of coal
	C	is the operating cost of producing coal
	i	is the discount rate or expected after-tax rate of return
	n	is the difference between the last year of production from the reserve and the year the lease occurs
	t	is time in years
	PV	is the maximum amount of money a developer will bid for the reserves (the bonus bid)

With perfect knowledge, every bidder would know for every tract of coal reserves the future stream of revenues, R, and operating costs, C. Given the discount rate, i (the maximum return which the developer can earn on his capital in an alternative use), the future stream of net revenues could be expressed in current values as the present value of the investment, PV. If PV exceeds zero, the developer could earn a rate of return in excess of the normal rate of return, i. This excess return would be the economic rent realized from those particular coal reserves, and competition for the reserves would cause the successful bidder to equate his bonus bid with PV. In fact, PV is defined in the coal development literature as the fair market value (FMV) of the development rights purchased by the lessee. If PV equals zero, the developer expects to earn only a normal rate of return from production and would pay royalties but offer no bonus bid.

In such a competitive environment, it would make no difference to developers or the Government whether coal reserves in excess of market requirements were available to lease. The DCF formula would indicate precisely how much developers should pay for each block of coal reserves which are to be developed at different points in time under these conditions. For example, a dollar of net revenues (R-C), discounted at 10 percent, to be received in 10 years, is worth 38.6 cents today, whereas the same dollar received in 25 years is worth but 9.2 cents today. Leasing coal reserves in excess of market requirements would lower the bonus bid as a function of the number of years to development and the discount rate applied. However, with perfect capital markets, the Government can, in effect, invest the bonus bid for the number of years production is delayed at an interest rate equal to its discount rate. Thus, the bonus bids for two identical tracts with different development years are equal, in the sense that the true value of the bonus bid for the delayed-development tract is the actual bonus bid received plus the interest earnings on the bonus bid to compensate for its early leasing.

In summary, the idealized world of competition with perfect knowledge in the coal and capital markets would make it unnecessary to pursue an activist leasing policy. The Federal Government could, in these circumstances, stand ready to lease in a competitive bidding process as many coal reserves as desired by private industry. Since both Government and developers would know precisely how much Federal coal was required to satisfy future market demand at least cost, the Government would always stand ready to provide precisely the right amount and type of coal, and developers would seek neither more nor less. Competition and perfect knowledge among the bidders would ensure that each bonus bid would be equal to the present value of the net revenue stream from the reserves. By definition, this bonus bid would be a fair market value for the development rights to the reserves.

III. BACKGROUND OF FEDERAL COAL LEASING POLICY

Federal Coal Management policy has been in turmoil since the late 1960s. Around that time, both government agencies and independent organizations determined that relatively large amounts of Federal coal had been leased under an arrangement that had been poorly coordinated, required little performance from the coal mining industry, and provided what was considered minimal compensation to the Federal Government for the right to extract coal resources. These consequences of early coal policy or the lack thereof were not intentional but merely the result of past programs in several administrations, designed to encourage or even stimulate mineral development on public lands, as outlined in the original 1920 Minerals Leasing Act, at a time when coal on Federal lands was not considered an important component in the national energy matrix.

To understand the conditions that led to fundamental changes in leasing policies, the period from the early 1960s until the present should be broken into four rough segments: pre-moratorium coal leasing; moratorium up to the enactment of the Federal Coal Leasing Amendments Act (FCLAA, P.L. 94-377); enactment of FCLAA; and subsequent regulatory changes and proposed changes.

A. Pre-Moratorium Coal Leasing Policy

Prior to the 1971 moratorium on coal leasing, leases could be obtained either through competitive bidding or through a non-competitive system of prospecting permits and preference rights leases. An applicant for a coal prospecting permit was only required to pay a $10 filing fee and 25 cents per acre rental for the exclusive rights to explore for coal on a tract. To renew the exclusive exploration rights, the applicant only needed to claim a minimal investment of more than $1 per acre per year. This procedure enabled a prospector to lock up reasonably large parcels of Federal coal lands. 5/

Once the prospecting permit was issued and the applicant demonstrated to the satisfaction of the Bureau of Land Management (BLM) the presence of commercially minable quantities of coal, the prospector could apply for a preference right lease which, if granted, conveyed the exclusive right to extract the coal. This system made no provision for an auction and therefore there was no competition for the lease. This, however, does not suggest that there would have been active bidding, i.e., "effective competition," if the lease had been awarded as a result of an auction. On the contrary, the lack of active bidders in competitive leasing during the same period suggests that interest in Federal coal was generally lacking, regardless of the mechanism used for disposal. At that time leases had been divided about equally under the two systems, and many leases awarded under competitive bidding had attracted only one bidder. Many parties interested in obtaining Federal coal opted for the preference rights lease route whereby they applied for a prospecting permit, demonstrated the existence of "commercially developable" coal deposits in the permit area, and submitted a preference right lease application, tantamount to actual awarding of the lease. Once the lease was awarded, it was not closely monitored and incentives to produce coal on the lease tract were generally lacking.

5/ In December 1971, the Department of Interior reported that the Bureau of Land Management offices in the seven-State Council on Economic Priorities study area had pending some 604 prospecting permit applications asking for the rights to explore 2,156,364 acres, or three times the total public land acreage that is now under lease by any method. See: Cannon, James. Leased and Lost. A Study of Public and Indian Coal Leasing in the West. Economic Priorities Report. Published by the Council on Economic Priorities, New York, v. 5, n. 1, 1974. p. 24.

At this stage in the Federal coal management program, however, preference right leasing may have had some secondary benefits to the Government. Although the extent of western coal formations had been generally known for some time, detailed information about the deposits on specific tracts was scant. Consequently, whenever a coal prospector satisfied the "commercially developable" quantity requirement for a preference right lease, the Government gathered a little more shared information about the quantity and quality of reserves in the immediate area.

Although this system had been in place since the enactment of the Minerals Leasing Act of 1920, leasing of Federal coal did not peak until the 1960s. A report published in 1978 by the Senate Committee on Energy and Natural Resources said:

> From the enactment of the Minerals Leasing Act in 1920 until 1950, with the exception of the war years of 1941 through 1945, the number of leases awarded did not exceed 20 per year, and did not exceed 40 per year until 1960. From 1961 until 1965, however, the number of coal leases on the public lands rose sharply to slightly over 130 per year; it was almost 160 annually during the years from 1965 until 1970. 6/

Thus, during the decade from 1961 through 1970, more coal leases were awarded than had been in all of the previous years. At the time the Department of the Interior established the moratorium in 1971, approximately 16 billion tons of coal had been disposed of in over 300 leases. While 16 billion tons sounds like an enormous amount of coal (about twenty times the current annual production), it should also be viewed as involving 10 percent of the estimated Federal coal resources and 3.7 percent of an estimated total of 437 billion tons of public and private coal reserves in the United States.

6/ U.S. Congress. Senate. Committee on Energy and Natural Resources. Federal Coal Leasing Policies and Regulations. Committee Print. 95th Cong., 2d Sess. Washington, U.S. Govt. Print. Off., 1978. p.4.

Critics of Government leasing were more concerned with an apparent lack of production from these leases than with the number of leases and the total reserves held. According to a report by the Council on Economic Priorities, very few of the leases awarded under the old system were actually producing coal. 7/ This lack of production raised the possibility that lessees were acquiring and holding coal merely as a long-term supply hedge or were engaging in speculation with Federal coal. This concern seemed to be supported by the large number of lessees who were unlikely producers of coal.

In its December 1981 study, the Office of Technology Assessment pointed out that by 1970, 11 percent of Federal coal tracts under lease had been leased to unincorporated individuals who might not be considered viable candidates to actually mine coal. 8/ Production from these leases accounted for only 3 percent of total production from Federal leases in 1972. Although the percentage of holdings by unincorporated individuals dropped significantly by 1980—to 6 percent of acreage—the idea of lease speculation had already been sufficiently implanted to provide impetus for the 10-year moratorium.

The impact of speculators on commodity or land markets is varied. Under some circumstances their purchases and sales may actually provide a stabilizing force by reducing market fluctuations. However, in the case of the coal leases, where acquisition was at essentially no cost and the eventual timing of future transfer of those leases or their development was uncertain, the effect was not necessarily beneficial and was difficult to measure.

7/ Cannon, James. Leased and Lost, p. 4.

8/ U.S. Congress. Office of Technology Assessment. An Assessment of Development and Production Potential of Federal Coal Leases. OTA, 81-600178, Dec. 1981, Washington, U.S. Govt. Print. Off., p. 18.

B. Coal Leasing Moratorium

By 1971, it had become apparent to the Department of the Interior that something had to be done about Federal coal management policies. Until the Department could determine what direction a leasing program should take, it decided informally to discontinue leasing altogether in 1971. As matters developed, no long-term leases were issued between 1971 and 1981. 9/

In May 1974, shortly before the introduction of the Coal Leasing Amendments Act, the Department published a draft programmatic environmental impact statement on Federal coal management. The heart of the EIS was a systematic leasing approach called the Energy Minerals Allocation Recommendation System (EMARS). The system consisted of three stages: (1) the allocation stage, in which Federal reserves were matched to resource needs; (2) the tract selection stage, in which leasing targets were selected for each coal region; and (3) the actual leasing stage, which included more site-specific pre-sale evaluations, the actual lease sales, post-sale evaluation, and, finally, lease issuance. During the comment period, EMARS was criticized for lacking a more detailed description of the leasing program, and for lacking a justification for additional leasing when substantial amounts of coal were already under lease. 10/

9/ A distinction should be made between long- and short-term leases. Durin the moratorium, the Department of the Interior was still allowed to issue what we classified as short-term leases in three different instances: (1) when the lease would enable a coal company to honor its long-term contract obligations; (2) when withholding of Federal coal would create unemployment in the locality; and (3) to ensure the maximum recovery of Federal coal that would otherwise have been bypass and never developed.

10/ U.S. Department of the Interior. Bureau of Land Management. Environmental Impact Statement—Proposed Federal Coal Leasing Program, Volume 1. Draft. DES 74-53. Washington, April 1979. p. 1-13.

In September 1975, the Department of the Interior presented its second coal leasing effort. In addition to functional changes, Interior also modified the name of the program; it was now called the Energy Minerals Activity (instead of Allocation) Recommendation System (EMARS II). The change from "allocation" to "activity" was reportedly made to accommodate those who complained that "allocate" connoted development as the final outcome of all EMARS applications and excluded zero development as an option. EMARS II also contained three major phases: nominations and programming, scheduling, and leasing. The revised program, provided for greater industry input by allowing industry to nominate lease tracts.

On October 21, 1975, the Natural Resources Defense Council challenged the program in the U.S. District Court for the District of Columbia, alleging that insufficient justification was provided for the major changes between the draft and the final programmatic environmental impact statement. On September 27, 1977, the Court ruled that the programmatic impact statement was inadequate and enjoined the Department of the Interior from further leasing except where it was needed to maintain an existing operation, or to facilitate the development of Federal coal that would otherwise be bypassed. The Court further ordered Interior to prepare a supplement to the 1975 programmatic EIS and to solicit comments accordingly. Rather than submit a supplement to the old EIS, the Department prepared a totally new one, published in April 1979. This statement is principally the foundation for the current leasing program.

The four benefits of the new program, as claimed in the Department's EIS statement, are considered below.

(1) The most important benefit is that it would give the Nation greater assurance of being able to meet its national energy objectives.

Although the planned production from non-Federal and Federal properties appeared sufficient for the low-coal energy-demand scenario, the Department of Interior thought additional leasing might be desirable. In meeting national energy objectives, the Department observed that the lead time for the development of a coal mine on Federal property was somewhere between 4 and 7 years following the lease sale. Even this may be a little conservative, based on the amount of time that some tracts have taken for development. During this time, many geologic, economic, or environmental problems could occur that would prevent mining. The Department reasoned that in order to meet projected energy requirements, more leasing might be required to serve as a reserve against the possibility that some of the tracts might not prove suitable for development.

(2) New leasing would also provide a means to promote a more desirable pattern of coal development. It may be possible to reduce the adverse environmental impacts resulting from coal mining by altering coal development patterns.

The Department of the Interior suggested that to date leasing in the West was relatively hodge-podge and involved leasing of private, State, Indian, and Federal lands. Many of the tracts involved quantities that would not, by themselves, support coal production over the life of most receiving facilities (usually steam electric power plants), about 25 to 30 years. To withhold additional Federal coal lands would force development into a distorted, higher-cost production pattern on lands already accessible, either private land or Federal tracts already leased. Eventually, without additional leasing to flesh out lower-cost logical mining units, companies would be required to shift regional production patterns, perhaps to the East, where coal would be more expensive and where, because of the thinner seams, the environmental disturbance would be greater.

(3) A resumption of leasing offers significant legal and administrative advantages for the Department of the Interior.

The Department also concluded that resumption of leasing would expedite solutions to many of the administrative problems resulting from outstanding Preference Rights Lease Applications (PRLAs). Many of these applications were for areas considered environmentally unsuitable, but tracts could not be exchanged until the Department had formulated a comprehensive program for land-use planning and coal management.

(4) Finally, the state of competition in the western coal industry would be improved by new leasing.

The Department indicated that the best way to enhance competition among potential lessees was to resume leasing. This would allow other entrants into coal leasing and make it more difficult for a small number of operators to monopolize the development of western coal. Shortly before the publishing of the Final Environmental Impact Statement by the Department, a report on competition within the coal industry was prepared by the Department of Justice. This report concluded that the Federal leasing moratorium could, in fact, be detrimental to competition for coal in the Northern Great Plains area. 11/

C. Leasing Legislation

Just before the Department of the Interior developed its new Federal coal management program, the Congress examined some of the shortcomings of the old

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11/ U.S. Department of Justice. Competition in the Coal Industry. A report written pursuant to section 8 of the Federal Coal Leasing Amendments Act of 1975. Washington, May 1978. p. A-38.

system and looked for new approaches. 12/ After extensive deliberation in the 94th and 95th Congresses, legislation cleared both Houses in June 1976. This legislation included provisions for an all-competitive bidding system and a requirement for continued production from leases following a designated time period (diligence requirements), and it eliminated prospecting permits and preference rights leases.

The legislation was vetoed by President Ford because it contained "so many rigidities, complications, and burdensome regulations . . . that it would inhibit coal production on Federal lands, probably raise prices for consumers, and ultimately delay our achievement of energy independence." 13/ Despite this opposition of the Administration, congressional support was sufficiently strong to override the veto, and FCLAA was enacted on August 4, 1976, as P.L. 94-377.

The new law made four major changes in the original 1920 coal leasing program. First, it established a requirement for operation and reclamation plans on Federal leaseholds. Section 7(c) of the new law provided the lessee 3 years within which to submit such a plan to the Secretary of the Interior. In cases where mining could result in significant environmental disturbance, the Secretary was granted the authority to approve, disapprove, or require modification of the plan. This section of the Leasing Amendments Act was the precursor of

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12/ For a more complete discussion of congressional activities on coal leasing, see: Mines and Minerals. In Congress and the Nation's Environment: Environmental and Natural Resources Affairs of the 93d Congress. By Duane A. Thompson and David L. Lindahl. U.S. Library of Congress. Congressional Research Service. Prepared for the Committee on Interior and Insular Affairs of the U.S. Senate, April 1975.

13/ U.S. Congress. Senate. Committee on Interior and Insular Affairs. Congress and the Nation's Environment: Energy and Natural Resources Actions of the 94th Congress. Committee Print. 95th Cong., 1st Sess. Washington, U.S. Govt. Print. Off. p. 558.

separate but much more comprehensive land reclamation legislation that was to follow in the 95th Congress. That law, the Surface Mining Control and Reclamation Act (P.L. 95-87), unlike section 7 of the leasing law, established stringent reclamation standards for all lands, both public and private. Furthermore, it was much more exacting in its reclamation standards. The inclusion of reclamation requirements in the Leasing Amendments Act, however, indicated the strength of congressional interest in environmental protection.

Second, the new law significantly changed the royalty system. Under the 1920 Minerals Leasing Act, the Government received a royalty that was a fixed sum per unit of production. Consequently, if the price of coal should increase, the percentage return to the Government from the gross income would decrease proportionately. To protect the proportional return to the Government, Sec. 7(a) of the law states:

> A lease shall require payment of a royalty in such amount as the Secretary [of the Interior] shall determine of not less than 12-1/2 per centum of the value of coal as defined by regulation, except the Secretary may determine a lesser amount in the case of coal recovered by underground mining operations.

The third major change in the coal management program eliminated the future issuance of preference rights leases described earlier and required that disposition of Federal coal be through a competitive bidding process only. As of about 1974, about 45 percent of the land under lease (a little over 300,000 acres) was acquired with preference rights leases. Section 2 of the amendments to the FCLAA states that the Secretary shall "upon the request of any qualified applicant or on his own motion, from time to time, offer such lands for leasing and shall award leases thereon by competitive bidding." [Emphasis added.] To further enhance competition for Federal coal, the Act also requires that no less than 50 percent of the leases be offered on a "deferred bonus bidding basis." This was intended to defray a large portion of the front-end cost to enable small mine operators to participate in the bidding.

The fourth major change made by the 1975 Coal Leasing Amendments Act required coal conveyed by Federal lease to be developed within a certain time frame (diligence). Many observers had suspected that the low bids for competitive leases prior to this change might have resulted from the existence of preference rights leases which were speculative holdings of Federal coal leases on which production had been delayed without regard for public need. According to the Council on Economic Priorities, by 1974 only 52 of the 474 outstanding leases (or 11 percent) were actually producing coal. Over 300 of the leases had never produced any coal, and during the 54 years of the leasing program, Federal lands had been responsible for producing less than one percent of the total U.S. output. Alternatively, while these leases were obviously overhanging the market, their lack of development, at least in some cases, could also be interpreted as evidence that the leases had little commercial value, were not mineable, or had, after original acquisition, actually proven to be poor prospects for development.

Section 7 of the FCLAA addresses this issue. Any lease which was issued after enactment of the Act and which is not producing coal in commercial quantities following its tenth year shall be terminated. The Act does, however, provide the Secretary of the Interior with some flexibility in instances where production already begun is interrupted unavoidably. In such cases, the lessee can continue paying royalties to the Government in amounts equivalent to those which would have been paid if production had continued. These advanced royalties can then be credited against actual royalties later, when production is resumed, provided that the interruption is in good faith and not too long.

D. Subsequent Regulatory Changes

The permanent regulations under the new coal leasing law were issued July 19, 1979. Compared to the prior situation, they can be characterized as comprehensive and detailed. Their scope prevents discussion of all their facets in a brief paper, so attention is directed to those regulations pertaining to the determination of the fair market value (contained in 43 CFR 3400) and the diligence requirements.

Under the 1979 regulations, the Secretary solicited (under 3422.1-1) much more detailed information than was previously solicited from interested parties in determining fair market value of coal resources, the methods of extraction that would achieve the maximum resource recovery, income streams and production costs (all discounted at the appropriate rate with an explanation there of), and the price that the coal might reasonably be expected to bring in the market. The regulations required that the authorized officer, based on the information above, determine the fair market value of the coal to be leased, and that no bonus bid less than $25 per acre be accepted. Prior to the actual sale, the Department of Interior was required to publish the time and place of the actual auction, along with the minimum acceptable bids that would be considered.

Following the sale, a panel was to be convened to determine if the high bid reflected the fair market value of the lease, and to recommend approval or rejection of the issuance of the lease. Where it was considered beneficial, the regulations permitted an alternative bidding system (intertract bidding—section 3422.3-2) designed to stimulate bidding where lack of competition existed. This involved soliciting bids on several tracts, each of which might have only one interested developer, but leasing only the tract which commands the highest bid (per ton or acre). The intent was to force the bidder towards a bid representing the true value of the tract to him.

These regulatory changes pertaining to "fair market value" have themselves been subjected to some technical but generally not substantive changes by the current Administration. An example of current Administration changes is the total deletion of the section pertaining to the estimation of fair market value of the coal (section 3422.1-2). It should be noted, however, that much of the essence of that section is still contained in the most recent final regulations issued July 30, 1982. The new regulations still require the authorized officer to prepare a report outlining the quality of the coal and its value, based on available information including public comments on the fair market value (FMV) and the maximum economic recovery (MER). This regulation suggests that the appropriate officials within the Department of Interior should still solicit public comments on the quality of the coal, its chemical and physical characteristics, along with what is perceived as the fair market value. While many of these changes are characterized by the Administration as reflecting a desire to eliminate red tape, they are perceived by environmental protection groups and many State and local governments as reducing the opportunity for citizen participation in the coal leasing program. Apart from the immediate question of arriving at fair market value, many of the parties involved in coal leasing understandably resist any reduction in opportunities to express their concerns and to be involved in the decision process.

Apart from environmental concerns, the Department has drawn some major criticism for its switch from basing leasing targets on projected coal demand to basing its targets on industry's perception of long-term reserve requirements. These concerns center on the potential for leased reserves to exceed estimates of regional demand previously determined by the Department of Energy. Defending its actions, the Administration has indicated that this change would eliminate its need to forecast future coal demand, an uncertain and difficult task, by providing industry with more flexibility to react to changing market conditions.

One of the recent regulatory changes involves the definition of the term "commercial quantities" contained in the law. This change would require a significantly smaller percentage of the total lease reserve to be produced annually for the lease to remain in good standing. Another change involves the manner of applying the 10-year diligence period to leases for outstanding coal issued prior to the enactment of FCLAA. Section 7(a) of the FCLAA states, "A coal lease shall be for a term of 20 years and for so long thereafter as coal is produced annually in commercial quantities from that lease. Any lease which is not producing in commercial quantities at the end of 10 years shall be terminated." [Emphasis added.] Under the original regulations, no unproductive leases would be permitted past 1986, 10 years after enactment of the law. This would mean that an unproductive lease issued in 1970, one year preceding the moratorium, would expire in 1986, even though there were still 4 years to go on its term. Under present regulations, the diligence clock does not start until the first readjustment of the lease, which is initially 20 years. A lease issued in 1970 could now remain in force until the year 2000. The initial term of the lease would carry it until 1990, after which the lessee would have another 10 years to establish commercial production. In this example, the time difference between the two interpretations of diligence is 14 years.

The Department of the Interior defended another of its changes as an attempt to discourage speculation and to encourage efficient development patterns.

This regulatory change involved increasing the minimum acceptable bid from $25 per acre (contained in the original 1979 regulations) to $100 per acre. It was hoped that the increase would discourage the low-cost procurement of coal reserves for purely speculative purposes by those not directly involved in coal mining. In addition, the greater initial cost might stimulate earlier development of those reserves which are leased, in order to recover the investment. The interest of prospective bidders would, of necessity, tend to gravitate toward the higher-value Federal reserves.

On September 28, 1982, a suit was filed in the United States District Court for the District of Columbia against the Department of the Interior's Bureau of Land Management (BLM) by eight environmental organizations. 14/ The complaint filed by the plaintiffs seeking injunctive relief is critical of the leasing levels (items 52 through 57) and of the new diligence requirements proposed by the BLM (items 58 and 59). The complaint does not include any type of economic analysis to prove or disprove the merits of further leasing. It maintains only that sufficient coal is already under lease to meet demand for many years.

The public policy concerns in coal leasing are much broader than governmental income or the environmental issues, which receive so much attention. There is the fundamental question as to what leasing policy will most effectively enable society to exploit its coal resources in a manner which provides its members with the greatest benefits. The objective is to provide an operational framework which can take full account of all benefits and costs of coal development (including environmental costs).

14/ Plaintiffs include the Natural Resources Defense Council, Inc.; the Sierra Club; the National Wildlife Federation; the National Audubon Society; the Environmental Policy Institute; the Northern Plains Resource Council; the Western Organizations of Resource Councils; and the Powder River Basin Resource Council.

E. Recent Leasing Activity

The 1982 Powder River Basin sale has been severely criticized by both the Surveys and Investigations staff of the House Appropriations Committee and the General Accounting Office. Each has published a report concluding that the Department of the Interior issued coal leases for less than fair market value. The report of the House Appropriations Committee further indicated that the entire 1982 sale may have been compromised by a leak to industry officials of the Department's minimum acceptable bids (MABs) just prior to the auction. Just after the date of the suspected leak, Department officials met and made significant reductions in the MABs, thereby giving the appearance that the first ones were too high and had received a negative reaction from industry. To further complicate matters, shortly following the alleged leak, the Department of Interior changed its system from one of minimum acceptable bids to one of "entry level bids." According to Interior witnesses, the entry level bids were not to be confidential and would be published; also, entry level bids were not intended to be the final bids.

In hearings before the House Appropriations Committee, Secretary James Watt denied the charge of a leak and also stated that the change to the new leasing system would have made such a leak irrelevant anyway, since the entry level bids would be public knowledge following their publication in the Federal Register.

The GAO report was critical of the bids received by Interior for its coal. Moreover, the Agency concluded that, in the midst of its largest lease sale, Interior should not have been changing from one bidding system to another without proper justification and more in-depth analysis of the consequences.

Disagreement between elements of Congress and the Department of the Interior has resulted in legislative proposals to curtail further leasing in FY84, directly and through the appropriations process. The appropriations bill containing the language for the moratorium passed in the full committee on June 21, 1983. Similar legislation to impose a 3-month moratorium until FY84 failed to pass the Senate (48-51). The amendment to the continuing resolution to prevent the imminent Ft. Union lease sale did not survive the conference compromise.

A commission has, however, been established to study the leasing question. The Department of the Interior has appointed commission members and the study is under way.

The latest congressional effort to stop the next lease sale invokes section 204(e) of the Federal Land Policy and Management Act (FLPMA, P.L. 94-579), which requires the Secretary of the Interior, when notified by the Interior Committees of either the House or Senate, to make emergency withdrawals in situations where extraordinary measures must be taken to preserve values that would otherwise be lost.

Throughout the leasing debate, the Department of the Interior has maintained that another moratorium would be counterproductive and that, if possible, it would carry forward its plan to lease several billion tons of coal over the next 4 years. Trade journals have reported that the most recent debate is centered on the constitutionality of section 204(e), considered by the Administration to be a legislative veto.

IV. LEASING POLICY WITHOUT COMPETITIVE MARKETS AND PERFECT KNOWLEDGE

Some of the conditions necessary for the efficient solution discussed in Chapter II to hold are not met by actual circumstances. The history of Federal coal leasing policy presented in Chapter III is a reflection of the Federal Government's efforts to adjust its leasing policies to these circumstances, including among others: the Government's own potential monopoly position in coal supply, the effect of capital market conditions on competitive bidding for leases, and the presence of social costs from the extraction and combustion of coal. This chapter discusses these factors with respect to their impact on: (1) the year a leased Federal coal reserve would be developed, (2) the bonus bid the Government would receive for a Federal coal lease, and (3) the market price of coal. 16/

A. Government Monopoly Power

With competitive markets and perfect knowledge, both Government and industry would know with certainty the quantity, quality, and cost characteristics of all coal reserves. They could then make refined judgments as to which reserves should be made available for lease. However, Government and industry are not, of course, in possession of such information. The Federal tracts currently leased, even if more than adequate in tonnage to satisfy projected demand

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16/ For penetrating discussions of many of these issues, see: ICF Incorporated. Potential Impact of Overleasing and Underleasing of Federal Coal. Final Report Prepared for the U.S. Department of Energy, August 1981. And: ICF Incorporated. Economic Assessment of Effects of Royalties, Severance Taxes, and Diligent Development Requirements on Coal Production, Prices, and Consumer Costs. Draft Final Report Submitted to the U.S. Department of Energy, June 1982. And: McDonald, Stephen L. The Leasing of Federal Lands for Fossil Fuels Production. Resources for the Future. 1979.

for many years, are unlikely to represent the least-cost tracts from among the Government's extensive acreage. Moreover, the Government owns so much of the least-cost coal that it has been postulated that a concerted leasing effort would affect the market price of coal, as noted in one Government study of its coal leasing policy:

> The Federal Government should rapidly offer Federal coal tracts in each region to clear the regional markets of higher cost non-Federal coal. The goal is to generate quickly post-sale markets wherein coal prices would be determined based on the extraction costs of the new low-cost Federal coal with all rents squeezed into lower prices. 17/

This suggests that the Federal Government has been underleasing its least-cost reserves relative to the efficient leasing solution. Leasing more least-cost Federal reserves would reduce the price of coal until the cost (including an intertemporal rent component) of the last reserves exploited in any one period would equal the market clearing price, assuming that coal supply markets are workably competitive . In this way, any excess of returns over cost on the non-marginal reserves would be economic rent and not the result of potential Government monopoly power over the supply of coal. In fact, not leasing lower-cost Federal coal in prior years means that the Government probably earned monopoly rents on the coal it did lease, as did owners of privately held coal reserves.

A policy designed to offer for lease the least-cost Federal reserves could therefore be expected to shift the coal supply curve down, increase competition in coal supply markets, and, given a relatively inelastic demand for coal in the short run, lower the market price of coal. This would, of course, eventually lower the future calculation of PV for unleased higher-cost tracts and the bonus bid received by the Government on such tracts. Over time, the decreased price

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17/ Department of the Interior, Federal Coal Management Program, p. II-8.

of coal relative to other fuels would cause the rate of depletion to increase and the rate of increase in the market price of coal to rise, making exploitation of higher-cost tracts profitable.

In summary, a policy of leasing the least-cost Federal reserves could conceivably lower the market price of coal because of increased competition in coal supply markets and the elimination of the market effects of the Government's monopoly power, assuming that adequate amounts of the Government's least-cost reserves are not currently being leased. The bonus bids on both Federal and privately owned higher-cost reserves would decline. These lower bonus bids would still incorporate a return from economic rent, but any revenue from the bonus bid attributable to a high market price of coal caused by the Government's failure to offer adequate amounts of its least-cost coal reserves would be eliminated over time. Income would be transferred to consumers in the form of lower prices, provided that all other factors are functioning efficiently, and away from the Government and private resource owners. In effect, this interrelationship of Federal leasing policy and the market price for coal demonstrates that a larger bonus bid is not necessarily consistent with a leasing policy that is functioning efficiently and in the public interest. The bonus bid is only one of several ways in which a public economic gain is achieved in the management of publicly owned reserves.

B. Lack of Knowledge of Future Coal Requirements

The abilities of the Government and private developers to accurately forecast requirements for Federal coal fall far short of the perfection assumed in Chapter II. This is not surprising since such forecasts require estimates of future prices and costs of coal from all sources, as well as similar information for competing energy sources. The myriad factors which can influence these estimates cannot be modeled with certainty.

Assuming that the Government desires to avoid the possibility of providing insufficient amounts of low-cost Federal coal for lease, thereby avoiding the possibility of raising coal prices above the desired level, it must consciously offer more coal reserves for lease than its forecast suggests are necessary to satisfy expected market requirements. This leasing strategy means that the Government offers some coal reserves for lease earlier than Chapter II suggests.

Overleasing provides a cushion, a margin of error, in case market demand for coal exceeds expectations. If the forecasted result actually occurs, developers exploit the least-cost tracts so that the equilibrium referred to in Chapter II is still attained. The development of additional leased tracts is delayed. Uncertainty regarding future market development does, however, cause developers to discount for a greater number of years the return from tracts the development of which they judge is most likely to be delayed—that is, "t" in the DCF formula is adjusted upward. PV calculated by developers for these tracts falls, and bonus bids are lower. One can view the decreased bid as the developer's compensation for bearing increased risk, and as the Government's payment for the decreased likelihood of providing inadequate coal reserves.

In summary, uncertainty about future prices and costs generates uncertainty about how much low-cost Federal coal should be leased. Taking the calculated risk of a modest amount of overleasing to avoid a market price for coal above the efficient price may be a desirable policy to pursue. Such a policy does, however, require accepting that the bonus bids on the higher-cost Federal tracts being leased could be reduced as a consequence.

C. Inequality of Private and Public Discount Rates

The discussion in Section B suggests that a reduction in bonus bids from overleasing could involve a justifiable revenue loss to the Government because overleasing would increase the likelihood of achieving the policy objective of seeking out the socially optimal coal supply and efficient market price of coal. However, the reduction in bonus bids could deviate from a justifiable amount if the Government and private sector bidders used different discount rates. The developer's discount rate will reflect his cost of obtaining funds to invest, calculated as a weighted average of the proportions financed with debt and equity, and adjusted for income taxation and risk.

There are several good reasons to question an assumption of equal public and private discount rates. The greater is the perception of risk (variability of expected rate of return), the greater is the subjective risk premium and the higher is the discount rate. For the private firm, if the project financed by the investment is unsuccessful, the owners may lose their investment and control of the firm. Risk is, therefore, an important consideration. For Government investment, society as a whole faces no similar individual risk. Although any Government project involves some risk of failure, the Government's taxing power and its number of projects act to absorb the impact of failure of an individual project, making it a less quantitatively important factor. Thus, the nature of the risk tends to make the private discount rate exceed the public discount rate.

It can also be argued that public capital formation is insufficient because each taxpayer tends not to account for the effect this public capital can have on the aggregate income of society and from which he may also derive satisfaction. A somewhat parallel argument asserts that the current populace should care more about future generations, and recognize that current public investment generates external benefits not recognized in the return to individual investors. These various rationales suggest that the social benefits of public capital formation are broader than the private benefits alone, and the risk is less. Thus, it would not be surprising if the Government's decision maker applied a lower discount rate in determining the PV of an investment than did the private investor.

With this probable difference between the operative private and public discount rates, leasing of coal reserves in excess of market requirements is likely to generate a relatively low bonus bid for leases with a slower expected rate of development. Assuming that the private discount rate is 15 percent, the public discount rate is 10 percent, and the developer judges that a given coal tract can be marketed in 15 years, the operator will value a dollar of net revenue (R-C) to be received in 15 years to be worth currently 12.3 cents. In contrast, the Government, using its public discount rate, would value the same dollars of net revenues to be recovered 15 years in the future at 23.9 cents. The Government is offered a 12.3-cent bonus bid from the developer. At the 10 percent public rate of return, this bonus bid will be worth but 51.4 cents to the Government in 15 years, rather than $1. The Government needs a bonus bid of at least 23.9 cents to make it as well off as it would be by holding the coal reserves until development.

Thus, the longer the delay between the act of leasing the coal and its development, the greater is the possible discrepancy between the present value of the bid the Government will receive and the bid it would hope to receive if the coal were leased given a shorter delay before development. If efficient development requires a 5-year period after the act of leasing before production begins, the discrepancy between the public and private discount rates imposes an apparent loss on the Government for every year in excess of 5 years in which a leased tract is not developed.

A discrepancy between the public and private discount rates suggests that the desirable amount of overleasing of low-cost Federal reserves may be less than that suggested by the analysis in Section B. Unlike the preceding situation, the decreased bonus bids attributable to unequal discount rates are not offset by any corresponding compensation to the Government. At some point, the value of the bonus bid difference exceeds the benefits to be gained from additional overleasing. Whether the public and private discount rates actually do differ remains a subject of continuing debate. 18/

D. Absence of Competitive Bidding

The absence of competition for Federal coal leases would probably cause the Government to receive a relatively lower return on the development rights conferred by the leasing process. So far as bonus bids reflect the expectation of other bids, they would be higher under competition. Two circumstances are particularly relevant in this regard. First, if all potential bidders do not have access to the capital markets, this can reduce the number of bidders. Second, some Federal coal reserves may be located in areas where coal ownership patterns make more profitable exploitation feasible for a limited number of firms, perhaps even only one. As a consequence, there is a real possibility of only one firm's bidding.

18/ This issue is discussed by several authors in: Lind, Robert C., et al. Discounting for Time and Risk in Energy Policy. Resources for the Future, 1982.

Functioning, accessible capital markets suggest that any potential developer of coal reserves or speculator in the acquisition of coal reserves for future sale to developers can borrow sufficient funds because of the expected returns from the leasing and production of Federal coal. However, this condition does not always prevail. The existence of uncertainty in the extraction industry, combined with the necessity of making large front-end bonus bid payments usually requires seeking out substantial equity capital sources that will accept the risk. Many small developers may find that the capital markets assess their prospects in a manner which effectively precludes their participation. Coal operators may then find themselves unable to raise adequate capital at rates which enable them to make competitive bids.

Thus, the restricted access of some potential bidders to capital markets may be reducing the number of bidders for Federal leases. This raises the possibility of a shortage of potential bidders on Federal leases, with the process dominated by large firms. To the extent that such a shortage of bidders is a significant problem, it can be exacerbated both by a bonus bid system requiring large front-end payments, and by a leasing rate which places substantially more reserves up for bid than forecasts of market conditions require.

With a lower front-end financing requirement, the need for equity financing would be reduced as more expenses could be paid by the operator out of revenues generated by the leased coal. The deferred bonus-bidding system introduced in section 2 of P.L. 94-377 (FCLAA) was intended to address this problem. Combined with a lower leasing rate, this system might enable available bidders to bid on a higher percentage of leased tracts, thereby increasing the competition for each tract offered and producing bonus bids more nearly approximating fair market value. 19/

These difficulties suggest that it may be desirable for the Government to place some constraints on the amount of Federal coal leased in excess of projected market requirements in order to avoid the consequent reductions in bonus bids. The reports of the Anti-trust Division of the Department of Justice on competition in the coal industry suggest that coal markets are "workably competitive," which implies that adequate numbers of potential bidders do exist to make competitive bidding possible. 20/ If so, then the need is to make certain that they do actually enter into the bidding process.

The other factor affecting competitive bidding is ownership patterns. A coal reserve is most efficiently mined as part of a Logical Mining Unit (LMU). Least cost operation is sensitive to the scale of operation. This makes it necessary to consider whether many Federal coal reserves must be combined with reserves owned by non-Federal parties to make an LMU. Since only the owner of the non-Federal reserves in the LMU can produce coal from the Federal reserves at least cost, this owner is also the only bidder who can afford to offer the highest value for the Federal reserve (calculated as part of the LMU). Few, if any, bidders are likely to appear, and the bonus bid will likely be lower than might be made in the face of competition. Such tracts are a special problem. Unless the Government is willing to alter the legal structure of property rights,

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19/ For a discussion of the relationships among alternative bidding systems, competition, and the Government's capture of economic rent, see: McDonald, Stephen J., The Leasing of Federal Lands for Fossil Fuels Production, Chapter 6.

20/ This conclusion was based on examination of concentration of uncommitted non-Federal reserves, ease of entry, diversity of sellers, and several other factors. U.S. Department of Justice. Competition in the Coal Industry: Report of the U.S. Department of Justice Pursuant to Section 8 of the Federal Coal Leasing Amendments Act of 1975. 1978 (p. 130), 1979 (p. 67).

or require as a condition of bidding for such tracts that the owner of the non-Federal reserves in the LMU agree to sell its reserves at fair market value to the high bidder on the Federal portion, the bonus bid will probably be less than the fair market value of the development rights. 21/

E. Diligent Development Requirements

As discussed in Chapter II, the return from each block of coal reserves is maximized by beginning production in a particular year, which in turn requires leasing the reserve as many years prior to that production year as necessary to permit mine development. Producing too early lowers returns because the producer sacrifices production in later years in which the benefit of higher prices is expected to outweigh the accompanying cost of discounting these higher prices. Producing too late can lower the PV of returns because the producer has delayed production into future years when the benefit of higher prices proves to be less than the accompanying cost of discounting these higher prices.

Federal coal leases issued after the 1975 Federal Coal Leasing Amendments Act are required to produce at least 1 percent of the lease's logical mining unit reserves within 10 years after lease issuance. Provided that the developer can contract for sale of the coal (during the diligence period) in the particular years which maximize returns, the diligence requirement has no effect on behavior. However, the developer is more likely to be faced with uncertainty regarding a sales contract. In theory, one would suppose that an effort might

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21/ This problem and solution have been discussed in the case of the "checkerboard" ownership pattern of much Federal and railroad coal. See: U.S. Library of Congress. Congressional Research Service. Repealing Section 2(c) of the Minerals Leasing Act of 1920: The Effect on Federal Lease Revenues and on Competition in the Production of Coal. Report by Duane A. Thompson and Dennis Zimmerman. June 17, 1982.

be made to set the desired production year earlier, as discussed above, to compensate for this uncertainty.

With uncertainty and a diligence requirement, the developer must now face the real possibility of not being able to sell the coal within the diligence period. To compensate for this possibility, the developer sets the desired production year even earlier. The effect of this change in production behavior is to increase the probable size of the producer's income from economic rent, given the diligence requirement. However, relative to the rent which would be forthcoming without a diligence requirement, rent from the leased coal reserves is reduced. Thus, a diligence requirement can be expected to reduce bonus bids for Federal coal leases because it causes producers to choose an earlier production profile, which generates sub-optimal rent recovery from the leased reserves.

Moving production to an earlier time could have the effect of shifting the coal supply curve down and lowering market prices. In effect, the developer may sacrifice selling the coal at a higher future price in exchange for a higher probability of sale and less discounting of net receipts. The addition of a diligence requirement to a policy of overleasing can, therefore, be seen as a possible cause of reduced bonus bids and a lower market price for coal due to planning production earlier.

The Government could, in turn, minimize these changes by delaying the offering of some tracts for lease—that is, by reducing the insurance it seeks against inadequate coal supplies by overleasing. This would effectively move the diligence period for some coal to a later period and would place developers' accelerated production schedules closer to the year which they would select in the absence of the diligence requirement. Thus, if the Government is seeking an optimal leasing strategy, it has to consider the possibility of a slower pace in leasing its coal reserves if a diligence requirement is in effect. If an optimal leasing strategy is not achieved, PV estimates could fall and the Government would, as a consequence, receive smaller bonus bids. It is possible that information available about coal reserves and markets is inadequate to permit a diligence requirement to be a part of a practical effort to arrive at an optimal leasing strategy.

F. Royalties

The Federal Government levies a 12.5-percent minimum royalty based on the sale price of surface-mined coal, and an 8.0-percent royalty on deep-mined coal. A royalty on an individual coal reserve raises the operator's costs (C) in his DCF formula and reduces the net revenue received in any year. The producer may have to wait for prices to increase in the future in order to make production profitable. The desired production year can, as a consequence, be later.

The present value of the reserves, which determines the bonus bid, will, as a result, be reduced for two reasons. First, choosing to produce in any year later than the production year determined in the absence of the royalty has the effect of reducing the economic rent from the reserve (as determined in the absence of the royalty). Second, the economic rent is reduced by the amount of the royalty.

Bonus bids, income tax payments, and royalty payments are all revenues to the Federal Government. The sum of these three payments from leased coal reserves is not necessarily the same sum that could be received from a bonus bid and income tax payment in the absence of the royalty. For example, it could be less due to the effect of the royalty payments on the production year chosen. Delayed production would reduce the economic rent attributed to exploitation of the coal reserves, and therefore the maximum bonus bid which can be made. The presence of a royalty, therefore, could reduce the bonus bid and income tax payments by an amount which exceeds the royalty revenues. On the other hand, a royalty may have an effect similar to deferred bonus bids, reducing front-end payments, increasing bidding competiton, and thereby increasing bonus bids somewhat.

Because the Federal Government owns a substantial share of the Nation's coal reserves, the collection of a royalty on these reserves has the effect of shifting the coal supply curve up and raising market prices. This is caused by developers' attempts to delay production pending receipt of higher prices for their coal. The presence of a royalty payment plus a policy of overleasing can, therefore, be seen to have a combined influence toward reduced bonus bids and Federal revenues. A diligence requirement is an added pressure in the same direction. However, a diligence requirement may tend to move production plans to an earlier time, which could place downward pressure on market price, while a royalty payment may tend to delay production and raise market price. Given a royalty payment as one part of the Federal compensation package in coal leasing, a concurrent diligence requirement has a counter-effect to the royalty's delaying effect on production. Again, there is a substantial possibility that information available will not be adequate to arrive at a diligence requirement precisely set to offset the effects of a royalty.

G. Existence of Social Costs

The competitive market with perfect knowledge described in Chapter II assumes that all social benefits and costs of coal development are included in the calculation of the net revenue stream (R-C) in the DCF formula. If the reclaimed. If these social costs are not included in C, the underestimated cost will be less for western coal than it is for eastern coal. Although too much coal from both locations would be produced, the cost distortion would be greater for eastern coal and its excess output would be relatively greater if all other market conditions were similar. In this case, an overleasing policy for western coal would tend to reduce this distortion.

Environmental costs are not, however, the only social costs of concern to policymakers. Much of the public sector capital formation (such as roads and schools), necessary to support coal mining already exists in the East, and, in some cases, may be under-utilized or not utilized at all. The labor force is also in place. Development of western coal, on the other hand, is occurring frequently in areas with neither adequate public-sector capital formation nor labor force. Accounting for these costs suggests that some underestimated social costs would be lower for eastern coal than for western coal.

In addition, there are those who place a very high opportunity cost on the loss of an unspoiled environment in much of the West, and would consider this cost to be higher than comparable amounts of environmental impact in the East. This and the infrastructure argument would both be reasons for a reduction in the extent of overleasing of Federal coal reserves.

the producer because his costs are understated. If the value to the producer is larger, then the Government's bonus bid will also likely increase. This higher bonus bid receipt is, in effect, paid by those citizens who suffer from the uncompensated social costs.

Because the Federal Government owns a substantial share of the Nation's coal reserves, the absence of full inclusion of social costs in its leasing regulations and other legislation would have the effect of shifting the coal supply curve down and decreasing market prices. Developers would accelerate production because they would not need to wait as long for rising prices to make production profitable.

The efficiency of regulatory policies designed to force developers to consider the social costs of coal developement is a controversial issue. Some observers claim that the problem with the regulatory system is that it overestimates the social costs of coal production. Were this the case, the present value of the reserve would be reduced for the producer because his costs would be overstated. The producer would have to wait longer for prices to rise in order to make exploitation of the reserve profitable. The desired production year would start later, which would also reduce the value of the reserve to society. The Government's bonus bid would decrease, and the coal supply curve would shift up and increase market prices.

2. Non-Uniform Mismeasurement

It is also possible that the importance of social costs differs between western and eastern coal. The environmental cost per ton of strip-mined coal may be lower in the West, with its relatively flat coal lands amenable to reclamation, than in the East, with its mountainous coal lands which are not easily regulatory framework is inadequate to accomplish this task, the deficiency has serious implications for the rate of leasing and the size of bonus bids. The discussion of social costs is divided into two facets. First, it is examined on the basis that any mismeasurement of social costs is uniform for all coal, no matter its type or location. Second, the possibility is considered that the degree of mismeasurement might vary by type and location of coal.

1. Uniform Mismeasurement

Social costs should be included by developers in their projections of costs (C) in the DCF formula in order to achieve the socially desirable efficient price. This can be accomplished directly by administrative and legal requirements such as those which mandate reclamation, limit the sulfur content of fuels, or establish clean air standards, thus forcing the developer to recognize the expense involved. It can also be accomplished indirectly through a device such as severance taxation which allocates the necessary funds for reclamation to the public sector.

If the Government does not require all social costs to be borne by a developer, the developer will understate C in his DCF formula and overstate the net revenue produced in any year. The producer may not need to wait as long for prices to reach a point that makes exploitation of the reserve profitable. The profile of production will then be earlier.

The value of the reserve to society may then be reduced, because it is produced in a year different from the year which maximizes its value to society—the desired production year has been moved forward. In spite of this reduction in social benefits, the present value of the reserve may still be larger for

V. POLICY IMPLICATIONS

Perhaps, given competitive coal and capital markets and perfect knowledge, the Federal Government would not need to be overly concerned about its leasing policy. It could stand ready to lease in a competitive bidding process as many coal reserves as were sought by private industry.

Many of the conditions necessary for arriving at this economically efficient solution are not met by current circumstances. The recommendations contained in the EMARS documents, the changes mandated by the FCLAA, and subsequent regulatory changes represent the Government's efforts to reconcile its leasing policy to these deviations from competition and perfect knowledge. This report discusses what some of these deviations imply for leasing policy.

First, the argument that the Federal Government has already leased sufficient reserves in terms of gross tonnage to meet expected market requirements does not address possible national economic benefits from further current leasing of Federal coal reserves. As long as the Federal Government may own coal reserves the production costs of which are lower than the production costs of reserves currently leased and available for development, a leasing policy based on maximizing national economic well-being implies that lower-cost reserves can be made available. Otherwise, Government and private owners of coal reserves may earn monopoly returns, possibly pushing coal prices above the efficient level and transfering economic benefits from consumers to Government and private resource owners. 22/

22/ This assumes the existence of competition in the coal transportation network. Without such competition, the railroads might be able to reap the benefits of lower production costs (mine-mouth prices) resulting from leasing the least-cost Federal reserves. In this case, lower production costs would transfer income from the Government and private resource owners to the railroads, not to consumers; but the railroads' ability to extract rents is constrained by regional competition.

Yet it should be acknowledged that developing lower-cost reserves might lower bonus bids on leases for higher-cost reserves, demonstrating that prudent leasing policy does not always maximize bonus bids on any particular Federal reserves.

Second, if the Government wishes to avoid the possibility of not providing sufficient amounts of Federal coal for lease at the risk of raising coal prices above an efficient level, more coal reserves could be offered for lease than is forecasted to satisfy anticipated market requirements. It must be recalled that the myriad factors which influence a forecast—future prices and costs of coal and competing energy sources—cannot be modeled with certainty, and market demand may vary significantly from the forecast. However, while additional leasing of Federal reserves may have its attractions, bonus bids on the higher-cost Federal tracts being leased could be reduced. Such possible reductions represent a cost to Government for seeking a decreased risk in providing adequate coal reserves and the promotion of competition in coal supply markets.

Since the public discount rate may be lower than the private discount rate, leasing additional Federal reserves to move toward an optimal coal supply for society can impose some real costs on the Government. Added leasing can extend the delay between the act of leasing coal and its actual development. A higher private discount rate could mean that the bonus bid is less than that required to make the Government fare as well as it would with a shorter delay between leasing and development. At some point, the reduction in bonus bids could exceed the benefits to be gained from additional leasing (e.g., the decreased risk of providing inadequate coal reserves). Thus, the level of leasing must be carefully evaluated.

An additional factor requiring caution in the chosen level of leasing is the possible effect of non-competitive bidding. If capital market conditions make it impossible for small developers to borrow sufficient funds to bid on Federal coal leases, then it is possible that a shortage of potential bidders could reduce the bonus bids. The deferred bonus-bidding system introduced by section 2 of P.L. 94-377 (FCLAA) is one mechanism designed to address this problem.

A fifth factor affecting the leasing decision is the Government's requirement for diligent development. Given that the Government may decide to lease aggressively, a diligence requirement can cause developers to plan for production earlier than might otherwise be desired, provided some uncertainty exists regarding sale of the coal. Bonus bids may fall, production could move to an earlier time, and downward pressure could be placed on market prices.

A royalty payment may cause developers to plan for production later than would otherwise be desired. This also leads to lower bonus bids, but its consequences may be lower production and higher market prices. Given that a royalty payment is a conventional part of Government coal leasing, the diligence requirement could, in theory, be structured to compensate for any detrimental delaying effect of the royalty payment. It is, however, doubtful that the Government possesses adequate information to choose an optimal diligence period.

If regulatory policy does not cause developers to consider adequately all social costs, developers will then plan for production earlier than would otherwise be desirable. This has the effect of shifting the coal supply curve down and lowering market prices. Although the earlier production year has the effect of reducing the value of a reserve to society, the bonus bid may increase because the understatement of costs to the producer may actually cause the present value to the producer to rise.

The mismeasurement of social costs for western coal may differ from that for eastern coal. For example, if environmental costs are greater for eastern than for western coal, and in neither case are included in costs, then proper measurement would raise eastern coal prices relative to western coal prices. An overleasing policy would, in this case, help to accomplish this same relative price movement by lowering western coal prices. Exclusion of other social costs from consideration may distort western versus eastern prices and vice versa.

This report has tried to describe the history and potential economic effects of the various legislative and regulatory provisions which comprise Federal coal leasing policy. The conclusion which comes through most clearly in this analysis is that Federal policy not only affects the issue of whether bonus bids for Federal coal reserves reflect their fair market value, but also whether Federal reserves are being developed in a manner designed to eliminate potential monopoly rents and achieve an efficient market price for coal. It is shown that achieving an efficient price for coal is not always consistent with maximizing the bonus-bid received by the Federal Government.

It is anticipated that the Congress will continue to examine actively progress in the evolution of coal leasing to see if, on balance, the policy is moving in a direction of achieving a net economic gain. The fair market value issue and the difficult problem of its determination were explored in the recent reports by the General Accounting Office and the House Subcommittee on Surveys and Investigations. These reports focused in particular on how Federal leasing procedures may have lowered the return from bonus bids but the analysis did not extend to the impact of leasing on other aspects of coal markets. The thrust of this CRS study of the problem is to extend the analysis to market price behavior and other matters of concern.

If low-cost Federal reserves continue to be leased in order to gain for the Nation some of the benefits from an efficient market price for coal, it may not be possible to also maximize bonus bids at each lease sale. However, all possible effort should be made to establish bidding procedures (particularly on maintenance tracts) which have a reasonable prospect of eliciting bonus bids that fall within what is considered to be an acceptable range of fair market values. Even if the bidding procedures are not perfectly competitive in every case, it is conceivable that any resulting losses in bonus bids could be compensated for by the benefits to the Nation gained from seeking an efficient market price for the coal that is produced by the U.S. coal industry.

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United States Senate
COMMITTEE ON
ENERGY AND NATURAL RESOURCES
WASHINGTON, D.C. 20510

October 20, 1983

Mr. Richard M. Holsten, Jr., President
The Pittsburg & Midway Coal Mining Company
1720 South Bellaire Street
Denver, Colorado 80222

Dear Mr. Holsten:

The following questions were developed following the Subcommittee's hearing on S. 1634 on October 18, 1983:

1. According to the Office of Technology Assessment, there are approximately 250 out of 535 pre-FCLAA leases which appear unlikely to meet the commercial production requirements of section 2 of the Mineral Lands Leasing Act of 1920.

   (a) Please detail what you think the impact on the market would be of not prohibiting the issuance of any new mineral lease to a company that holds one of these coal leases that has not met the 10-year production requirement.

2. How many Federal coal leases do you hold that are due to meet commercial production requirements by 1986?

3. Aside from coal development, what other kinds of mineral development is your company engaged in?

Your prompt response to the above questions will be appreciated.

Sincerely,

John Warner

John W. Warner
Chairman, Subcommittee on
Energy and Mineral Resources

JWW:BT:bn

The Pittsburg & Midway Coal Mining Co.

R. M. Holsten
PRESIDENT

1720 Writers Four
1720 South Bellaire
Denver, Colorado 80222

November 2, 1983

The Honorable John W. Warner
U.S. Senate
Washington, D.C. 20510

Dear Senator Warner:

In response to your request of October 20, copy attached for reference, I will attempt to answer the question you posed.

I strongly support the elimination of the Section 3 ban on the issuance of new federal mineral leases to those companies holding non-producing pre-FCLAA coal leases. P&M is the holder of 13 such coal leases in addition to 24 active federal coal leases that are part of logical mining units (as defined) on which production is currently taking place.

In addition, P&M is a wholly-owned subsidiary of the Gulf Oil Corporation which, in turn, is directly involved in oil and gas production from federal leases, oil shale development, uranium production and phosphate development.

The elimination of the Section 3 ban would have a positive competitive impact, not just in coal, but in the mineral industries included in the 1920 Mineral Lands Leasing Act. It would permit increased bidding activity by pre-FCLAA lessees, many of whom are the nation's major producers who otherwise would be precluded from future lease sales. On the other hand, should pre-FCLAA lessees choose to relinquish their coal leases, the present inventory of engineered coal properties would be sharply reduced and not available for bidding on future market opportunities as they arise. This also would act to reduce competition and result in higher coal prices and ultimately higher energy costs nationwide.

In thinking about the market for federal coal, it is important to recognize that future growth opportunities are dependent almost entirely on the installation of new coal-fired electric generating stations in the west. For any number of valid reasons, including the recession, energy conservation, uncertainty with the nuclear program and the weak financial condition of many utilities, new market opportunities for federal coal are generally slipping further and further into the future. In addition, because of inherent variations in coal quality, in operating conditions and production costs as well as in freight rates, the competitive market for any individual federal coal lease is restricted to a very limited geographic area. This lack of flexibility only serves to further aggravate the current weak market being faced by federal coal lessees.

Furthermore, because of the capital intensity of the coal business today, very few companies are willing to install a new mine without first obtaining firm sales commitments for at least the majority, if not all, of the mine's output. The net result of all this is the situation we are in today whereby it is literally impossible to bring all our federal leases into production within the time constraint imposed by Section 3.

The effects of Section 3, therefore, now fall on the legitimate coal producers who are diligently attempting to bring their leases into production but who simply cannot do so because of prevailing market conditions. Either way, Section 3 is an anti-competitive measure that is not in the best interest of the energy consuming public, the federal government or the nation's energy producers.

I am most appreciative of your interest and efforts.

Very truly yours,

RMH/wt

Attachment

or otherwise disposed of, and all coal in storage (remaining in inventory).

(2) The prices received for all coal sold and to whom and when sold.

(b) The District Mining Supervisor and the Associate Director for Royalty Management shall have access to all records of the operator/lessee pertaining to compliance with Federal lease terms relating to Federal royalties, including, but not limited to:

(1) Qualities and quantities of all coal mined, processed, sold, delivered, or used by the operator/lessee.

(2) Prices received for mined or processed products, prices paid for like or similar products, and internal transfer prices.

(3) Costs of mining, processing, handling, and transportation.

(c) Licensees must maintain a current record of all coal mined and/or removed.

(d) Operators/lessees will retain these records for a period of time as determined by the District Mining Supervisor and the Associate Director for Royalty Management in accordance with current MMS rules and procedures.

§ 211.67–§ 211.69 [Reserved]

§ 211.70 Inspections.

(a) The operator/lessee shall provide access, at all reasonable times, to the District Mining Supervisor for inspection or investigation of operations in order to determine whether the operations are in compliance with all applicable laws, rules, and orders; the terms and conditions of the Federal lease or license; and requirements of any approved exploration plan for:

(1) Abandonment.

(2) Environmental protection and reclamation practices.

(b) The operator/lessee shall provide access, at all reasonable times, to the District Mining Supervisor or the Associate Director for Royalty Management for inspection or investigation of operations in order to determine whether the operations are in compliance with all applicable laws, rules, and orders; the terms and conditions of the Federal lease or license; and requirements of any approved resource recovery and protection plan for:

(1) Production practices.

(2) Development.

(3) Resource recovery and protection.

(4) Diligent development and continued operation.

(5) Audits of Federal rental and royalty payments on producing Federal leases.

(6) Abandonment.

(7) MER determinations.

§ 211.71 Notices and orders.

(a) *Address of responsible party.* Before beginning operations, the operator/lessee shall inform the District Mining Supervisor in writing of the operator/lessee's post office address and the name and post office address of the superintendent or designated agent who will be in charge of the operations and who will act as the local representative of the operator/lessee. Thereafter, the District Mining Supervisor shall be informed of any changes.

(b) *Receipt of notices and orders.* The operator/lessee shall be construed to have received all notices and orders that are mailed by certified mail, return receipt requested, to the mine office or handed to a responsible official connected with the mine or exploration site for transmittal to the operator/lessee or his local representative.

§ 211.72 Enforcement.

(a) If the District Mining Supervisor determines that an operator/lessee has failed to comply with the rules of this Part, the terms and conditions of the Federal lease or license, the requirements of approved exploration or resource recovery and protection plans, or orders of the District Mining Supervisor, and such noncompliance does not threaten immediate and serious damage to the mine, the deposit being mined, valuable ore-bearing mineral deposits or other resources, or affect the royalty provisions of the rules of this Part, the District Mining Supervisor shall serve a notice of noncompliance upon the operator/lessee by delivery in person to him or his agent, or by certified mail, return receipt requested, addressed to the operator/lessee at his last known address. Failure of the operator/lessee to take action in accordance with the notice of noncompliance within the time limits specified by the District Mining Supervisor shall be grounds for cessation of operations upon notice by the District Mining Supervisor. The District Mining Supervisor may also recommend to the authorized officer the initiation of action for cancellation of the Federal lease or license and forfeiture of any Federal lease bonds.

(b) The notice of noncompliance shall specify in what respect(s) the operator/lessee has failed to comply with the rules of this Part, the terms and conditions of the Federal lease or license, the requirements of approved exploration or resource recovery and protection plans, or orders of the District Mining Supervisor, and shall specify the action that must be taken to correct such noncompliance and the time limits within which such action must be taken.

(c) If, in the judgment of the District Mining Supervisor, an operator/lessee is conducting activities which fail to comply with the rules of this Part, the terms and conditions of the Federal lease or license, the requirements of aproved exploration or resource recovery and protection plans, or orders of the District Mining Supervisor, and/or which threaten immediate and serious damage to the mine, the deposit being mined, valuable ore-bearing mineral deposits, or, regarding exploration, the environment, the District Mining Supervisor shall order the immediate cessation of such activities without prior notice of noncompliance.

(d) A written report shall be submitted by the operator/lessee to the District Mining Supervisor when such noncompliance has been corrected. Upon concurrence by the District Mining Supervisor that the conditions which warranted the issuance of a notice or order of noncompliance have been corrected, the District Mining Supervisor shall so notify the operator/lessee in writing.

(e) The District Mining Supervisor shall enforce requirements of SMCRA only if he finds a violation, condition, or practice that he determines to be an emergency situation for which an authorized representative of the Secretary is required to act pursuant to 30 CFR 843.11 and 30 CFR 843.12.

§ 211.73 Appeals.

Decisions or orders issued by MMS under 30 CFR 211 may be appealed pursuant to 30 CFR Part 290, except that decisions or orders issued by the District Mining Supervisor under 30 CFR 211.72(e) are subject to appeal pursuant to 43 CFR Part 4.

§ 211.74–§ 211.79 [Reserved]

§ 211.80 Logical mining units.

(a) *General.* An LMU shall become effective only upon approval by the District Mining Supervisor. An LMU may be enlarged by the addition of other Federal coal leases or with interests in non-Federal coal deposits, or both, in accordance with 30 CFR 211.80(g). An LMU may be diminished by creation of other separate Federal leases or LMU's, in accordance with 30 CFR 211.80(g).

(b) The District Mining Supervisor may direct, or an operator/lessee may initiate, the establishment of an LMU containing only Federal coal leases issued after August 4, 1976. The District Mining Supervisor may direct, or an operator/lessee may initiate, the establishment of an LMU containing

Federal coal leases issued prior to August 4, 1976, provided that the operators/lessees consent to making all such Federal leases within the LMU subject to the uniform requirements for submittal of a resource recovery and protection plan, LMU recoverable coal reserves exhaustion, diligent development, continued operation, MER, advance royalty, and royalty reporting periods (but not royalty rates) made applicable by the LMU stipulations and the rules of this Part. Any Federal lease included in an LMU shall have its terms amended as necessary so that its terms and conditions are consistent with the stipulations required for the approval of the LMU pursuant to 30 CFR 211.80(e).

(c) *Contents of an LMU application.* An operator/lessee must submit five copies of an LMU application to the District Mining Supervisor if the operator/lessee is applying on his own initiative to combine lands into an LMU, or if directed to establish an LMU by the District Mining Supervisor in accordance with 30 CFR 211.80(b). Such application shall include the following:

(1) Name and address of the designated operator/lessee of the LMU.

(2) Federal lease serial numbers and description of the land and all coal beds considered to be of minable thickness within the boundary of the LMU. Identification of those coal beds proposed to be excluded from any Federal lease which would be a part of the LMU.

(3) Documents and related information supporting a finding of effective control of the lands to be included in the LMU.

(4) Sufficient data to enable the District Mining Supervisor to determine that MER of the Federal recoverable coal reserves will be achieved by establishment of the LMU. If a coal bed, or portion thereof, is proposed not to be mined or to be rendered unminable by the operation, the operator/lessee shall submit appropriate justification to the District Mining Supervisor for approval.

(5) Any other information required by the District Mining Supervisor.

(6) If any confidential information is included in the submittal and is identified as such by the operator/lessee, it shall be treated in accordance with 30 CFR 211.6.

(d) *Consultation.* (1) Prior to approval, the District Mining Supervisor shall consult with the operator/lessee about any Federal recoverable coal reserves within the LMU that the operator/lessee does not intend to mine and any Federal recoverable coal reserves that the operator/lessee intends to relinquish. The District Mining Supervisor shall also consult with the operator/lessee about Federal lease revisions to make the time periods for resource recovery and protection plan submittals, the 40-year LMU recoverable coal reserves exhaustion requirement, and diligent development, continued operation, advance royalty and Federal rental and royalty collection requirements applicable to each producing Federal lease consistent with the LMU stipulations.

(2) The public participation procedures of 30 CFR 211.5 shall be completed prior to approval of an LMU.

(e) *Stipulations.* Prior to the approval of an LMU, the District Mining Supervisor shall notify the operator/lessee and authorized officer of stipulations required for the approval of the proposed LMU. The LMU stipulations shall provide for:

(1) The submittal, within 3 years from the effective date of LMU approval, of a resource recovery and protection plan that contains the information required by 30 CFR 211.10(c) for all Federal and non-Federal lands within the LMU.

(2) A schedule for the achievement of diligent development and continued operation for the LMU. The schedule shall reflect the date for achieving diligent development and maintaining continued operation of the individual Federal leases included in the LMU, consistent with the rules of this Part. An operator/lessee may request to pay advance royalty in lieu of continued operation in accordance with 30 CFR 211.23.

(3) Uniform reporting periods for Federal rental and royalty on Federal leases.

(4) The revision, if necessary, of terms and conditions of the individual Federal leases included in the LMU. The terms and conditions of the Federal leases, except for Federal royalty rates, shall be amended so that they are consistent with the stipulations of the LMU.

(5) Estimates of the Federal LMU recoverable coal reserves, and non-Federal LMU recoverable coal reserves, using data acquired by generally acceptable exploration methods.

(6) Beginning the 40-year LMU recoverable coal reserves exhaustion requirement on the date that coal is first produced from the LMU, after LMU approval, as determined during the first royalty reporting period following such date.

(7) Any other condition that the District Mining Supervisor determines to be necessary for the efficient and orderly operation of the LMU.

(f) *Criteria for approving the establishment of an LMU.* The District Mining Supervisor shall, except for good cause stated in a decision disapproving the application, approve an LMU if it meets the following criteria:

(1) The LMU fully meets the LMU definition.

(2) Mining operations on the LMU will achieve MER of Federal recoverable coal reserves within the LMU. A single operation may include a series of excavations.

(3) All single Federal leases that are included in more than one LMU shall be segregated into two or more Federal leases. If only a portion of a Federal lease is included in an LMU, the remaining land shall be segregated into another Federal lease. The District Mining Supervisor will consult with the authorized officer about the segregation of such Federal leases. The operator/lessee may apply to relinquish any such portion of a Federal lease under 43 CFR 3452.1.

(4) The operator/lessee has agreed to the LMU stipulations required by the District Mining Supervisor for approval of the LMU.

(5) The LMU does not exceed 25.000 acres, including both Federal and non-Federal lands.

(g) *Modification of an LMU.* (1) The boundaries of an LMU may be modified either upon application by the operator/lessee and approval of the District Mining Supervisor after consultation with the authorized officer, or by direction of the District Mining Supervisor after consultation with the authorized officer. In accordance with 30 CFR 211.11(a)(3), the District Mining Supervisor may adjust only the estimate of LMU recoverable coal reserves pursuant to departmental actions or orders that modify the LMU boundaries, or upon approval of an operator/lessee application.

(2) Upon application by the operator/lessee, an LMU may be enlarged by the addition of other Federal coal leases or with interests in non-Federal coal deposits, or both. The LMU boundaries may also be enlarged as the result of the enlargement of a Federal lease in the LMU, pursuant to 43 CFR 3432. An LMU may be diminished by creation of other separate Federal leases or LMU's or by the relinquishment of a Federal lease or portion thereof, pursuant to 43 CFR 3452.

(3) In considering an application for the modification of an LMU, the District Mining Supervisor shall consider modifying the LMU stipulations, including the production requirement for commercial quantities.

(4) Pursuant to 30 CFR 211.80(e), the 40-year mine-out period for an LMU shall not be extended as the result of the enlargement of an LMU or as the result

of the revision or amendment of a resource recovery and protection plan.

(h) *Administration of LMU operations.* An LMU shall be administered in accordance with the following criteria:

(1) Where production from non-Federal lands in the LMU is the basis, in whole or in part, for satisfaction of the requirements for diligent development or continued operation, the operator/lessee shall provide a certified report of such production, as determined by the District Mining Supervisor. The certified report shall include a map showing the area mined and the amount of coal mined.

(2) *Diligent development, continued operation and advance royalty.* Operators/lessees must comply with the diligent development, continued operation, and advance royalty requirements contained at 30 CFR 211.20 through 30 CFR 211.25.

(3) Operators/lessees must comply with the LMU stipulations.

§ 211.81–§ 211.99 [Reserved]

§ 211.100 [Reserved]

§ 211.101 Audits.

An audit of the accounts and books of operators/lessees for the purpose of determining compliance with Federal lease terms relating to Federal royalties may be required annually or at other times as directed by the Associate Director for Royalty Management. The audit shall be performed by a qualified independent certified public accountant or by an independent public accountant licensed by a State, territory, or insular possession of the United States or the District of Columbia, and at the expense of the operator/lessee. The operator/lessee shall furnish, free of charge, duplicate copies of audit reports that express opinions on such compliance to the Associate Director for Royalty Management within 30 days after the completion of each audit. Where such audits are required, the Associate Director for Royalty Management will specify the purpose and scope of the audit and the information which is to be verified or obtained.

§ 211.102 Late payment or underpayment charges.

(a) The failure to make timely or proper payment of any monies due pursuant to leases and contracts subject to these regulations will result in the collection by the Minerals Management Service (MMS) of the full amount past due plus a late payment charge. Exceptions to this late payment charge may be granted when estimated payments on minerals production have already been made timely and otherwise in accordance with instructions provided by MMS to the payor. However, late payment charges assessed with respect to any Indian lease, permit, or contract shall be collected and paid to the Indian or tribe to which the amount overdue is owed.

(b) Late payment charges are assessed on any late payment or underpayment from the date that the payment was due until the date on which the payment is received in the appropriate MMS accounting office. Payments received after 4 p.m. local time on the date due will be acknowledged as received on the following workday.

(c) Late payment charges are calculated on the basis of a percentage assessment rate. In the absence of a specific lease, permit, license, or contract provision prescribing a different rate, this percentage assessment rate is prescribed by the Department of the Treasury as the "Treasury Current Value of Funds Rate."

(d) This rate is available in the Treasury Fiscal Requirements Manual Bulletins that are published prior to the first day of each calendar quarter for application to overdue payments or underpayments in the new calendar quarter. The rate is also published in the Notices section of the **Federal Register** and indexed under "Fiscal Service/Notices/Funds Rate: Treasury Current Value."

(e) Late payment charges apply to all underpayments and payments received after the date due. These charges include production, minimum, or advance royalties; assessments for liquidated damages; or any other payments, fees, or assessments that a lessee/operator/payor is required to pay by a specified date. The failure to pay past due payments, including late payment charges, will result in the initiation of other enforcement proceedings.

§ 211.103–§ 211.999 [Reserved]

[FR Doc. 82-[illegible] Filed 7-29-82; 8:45 am]

BILLING CODE [illegible]

B. R. Brown
Chairman
and Chief Executive Officer

Consolidation Coal Company
Consol Plaza
Pittsburgh, Pennsylvania 15241
(412) 831-4018

1983 [illegible] 32

November 11, 1983

The Honorable John W. Warner III
Chairman, Subcommittee on Energy and Mineral Resources
Committee on Energy and Natural Resources
United States Senate
Washington, D.C. 20510

SUBJECT: S. 1634 -- Federal Leasing Hearings on October 18, 1983

Dear Senator Warner:

In your letter of October 20, 1983, you posed several follow-up questions regarding federal coal leases. You asked the most difficult question first, namely - what would the effect on the market be if Congress did eliminate the "Section 3 penalty" and allowed companies holding pre-1976 leases to continue acquiring additional federal leases?

The most likely effect, in my view, would be to continue the moderation in market price which utilities and their customers have enjoyed for the past several years. The coal market is a dynamic one and numerous competitors with access to coal always results in considerable downward pressure on market price. I would not anticipate any restructuring of the market as a consequence of repeal. (Conversely, I would expect a rather dramatic and disruptive restructuring of the market should Congress fail to act.)

With regard to your second question, Consolidation Coal holds 34 leases subject to the 1986 development requirement. These leases total roughly 46,000 acres and have estimated recoverable reserves of 1.365 billion tons.

Finally, regarding other mineral activity, as you are aware, Consol is a subsidiary of Conoco Inc., a Du Pont company. Conoco is involved in extensive oil and gas activity and contemplates involvement with oil shale and tar sands. Du Pont mines ilmenite but not on federal property. Conoco had been in the uranium mining business but we are in the process of closing down those operations.

I hope these responses are helpful. Thank you for considering this important issue.

Sincerely,

BRB:ep

UTAH INTERNATIONAL INC.
550 CALIFORNIA STREET · SAN FRANCISCO, CALIFORNIA 94104

C. K. McARTHUR
SENIOR VICE PRESIDENT

November 16, 1983

The Honorable John W. Warner
Chairman, Subcommittee on Energy and Mineral Resources
United States Senate
Washington, D.C. 20510

Dear Senator Warner:

You recently requested response to several questions raised regarding our October 18, 1983 testimony on repeal of Section 3 of the Federal Coal Leasing Amendments Act of 1976, Senate Bill 1634. Our response is as follows:

Question 1 - Please detail what you think the impact on the market would be of not prohibiting the issuance of any new mineral lease to a company that holds pre-1976 federal leases that have not met the 10-year production requirement.

We assume this question refers to the impact of repealing Section 3 of FCLAA on the coal market. The bulk of federal coal in the Western U.S. is sold to electric utilities. Electric power generation fueled by western coal is among the least expensive sources of power in the U.S. A major reason for this inexpensive coal is the availability of substantial federal coal reserves. Over 85 percent of the production in the seven western states with the largest federal coal reserves came from mines with federal leases. These roughly 16 billion tons of federal coal leased prior to 1976 have allowed western coal production to increase from 35 million tons in 1970 to over 250 million tons in 1982. This availability has made it possible for coal producers and utilities to choose the most economic combination of coal source, power plant site and transportation to meet electric generation requirements. Repeal of Section 3, along with continued federal coal leasing, would allow the growth of coal production fueling inexpensive electric power generation to continue.

If Section 3 was not repealed, pre-1976 leaseholders would be forced to either turn leases back to the government or choose to be ineligible for any new mineral leasing. Either choice would serve to lessen competition and the availability of federal coal in the marketplace. The ultimate cost of this policy would be to drive up electric rates for those consumers using electricity generated by western coal.

The Honorable John W. Warner
November 16, 1983
Page two

Question 2 -	How many federal coal leases do you hold that are due to meet commercial production requirements by 1986?
	Utah International Inc. and subsidiaries hold 26 pre-1976 leases that would be required to be in production by 1986.
Question 3 -	Aside from coal development, what other kinds of mineral development is your company engaged in?
	Utah International Inc. and subsidiaries have worldwide operations in coal, copper, iron ore, aragonite, oil and natural gas.

Please let us know if you have any other questions relating to this subject.

Very truly yours,

C.K. McArthur

/cmm

West Elk Coal Company, Inc.
Post Office Box 591
Somerset, Colorado 81434
Telephone 303 929 5015

Curtis W. Foster
General Manager

[illegible] 20

December 12, 1983

The Honorable John W. Warner
Chairman
Subcommittee on Energy and
Mineral Resources
U. S. Senate
Hart Office Building
Washington, D.C. 20510

Dear Senator Warner:

On October 18, I testified before your Subcommittee on Energy and Mineral Resources relative to S. 1634, a bill to amend the Mineral Leasing Act of 1920 by repealing the proscription on mineral leasing originally contained in Section 3 of the Federal Coal Leasing Amendment Act of 1976. During the hearing, several subcommittee members raised questions with regard to S. 1634 and requested that the various witnesses respond to these inquiries subsequent to the hearing. In a letter of October 20, 1983 you reiterated that request. This letter is my response to those inquiries:

1. "Detail what you think the impact on the market would be of not prohibiting the issuance of any new mineral lease to a company that holds one of these mineral leases that has not met the 10-year production requirement."

   Response: This question was addressed by Mr. Harry Perry, an independent energy consultant, who testified at the hearing. Mr. Perry set forth his conclusions that since the most recent coal leasing moratorium was lifted, the competition which has occurred for federal coal leases resulted primarily from bidding by companies who retained leases subject to Section 3 provisions. In this regard, Mr. Perry cited in his testimony that companies holding leases subject to Section 3 were awarded 20 of 32 leases on which bids were received and that they had made an additional unsuccessful 16 bids on another 12 coal leases. Given these facts, a repeal of Section 3 might well result in increased competition for federal coal leasing by companies currently impacted by Section 3.

Mr. Perry additionally pointed out that Section 3 leaseholders were also active bidders in 20 of 35 onshore oil and gas lease sales. Also, in mineral leases other than for coal and oil and gas, Section 3 leaseholders were high bidders in 6 of the 8 leases.

I concur with Mr. Perry's conclusion that Section 3 leaseholders are in fact the key to maintaining effective competition for lease sales of federal resources. Mr. Perry's testimony also sets forth the potential impact upon the Section 3 leaseholders' ability to bid on additional federal leases if the proscription of Section 3 is not rescinded.

2. "How many federal coal leases do you hold that are due to meet commercial production requirements by 1986?"

   Response: Atlantic Richfield and its affiliated companies (including West Elk Coal Company) currently hold 10 federal coal leases which are subject to the commerical production requirements of Section 3.

3. "Aside from coal developments, what other kinds of mineral development is your company engaged in?"

   Response: Atlantic Richfield and its affiliated companies are actively engaged in onshore and offshore oil and gas development; copper, precious metal, molybdenum and industrial minerals development; and in the near future may be active in sodium and potassium development which will involve federal leases.

If my staff or I can be of any additional assistance to you, the other members of your subcommittee, or the subcommittee staff, please do not hesitate to contact me.

Respectfully yours,

Curtis W. Foster
General Manager

CWF/jm

October 24, 1983

Fill in inside address
Make sure there are
carriage returns on each line

Dear :

On October 18 you testified before the Subcommittee on Energy and Mineral Resources on S. 1634, a bill to amend the Mineral Leasing Act of 1920. In future consideration of this legislation there are a number of possible amendments that might be desirable. I would like your comments on five such amendments.

1. Provide that leases issued prior to August 4, 1976 for which an operation and reclamation plan, as provided for under 30 U.S.C. 207(c), is not submitted by August 4, 1986, shall be automatically terminated by operation of law.

2. Provide that leases issued prior to August 4, 1976 for which an operation and reclamation plan has been submitted, but upon which coal production or significant surface disturbance has not begun, may be relinquished by the lessee. Currently, lessees are required to acquire DOI's approval before they may relinquish their lease.

3. Provide that the prohibition on obtaining mineral leases, applied to lessees who fail to meet the 10 year production in commercial quantities requirement under 30 U.S.C. 201(a)(2)(A), shall be limited to the issuance of Federal coal leases, rather than to all mineral leases subject to the Mineral Leasing Act of 1920. The law should clarify that once a lessee meets the production requirements (currently defined by Department regulations as one percent of the recoverable coal reserves), the prohibition on obtaining additional mineral leases is no longer applicable.

4. Provide that the royalty on leases issued prior to August 4, 1976 which have not achieved production in commercial quantities on August 4, 1986 shall be increased along a sliding scale until such time as production is achieved. For example, the law could provide that the royalty for such leases would be increased on September 1, 1986 by 50 percent and by 50 percent each September 1 thereafter, but in no event would this exceed the current statutory rate of 12 1/2 percent. This would not change the Secretary's authority to lower the royalty rate for underground mining.

5. Provide that lessees may make a payment in lieu of actual production if the date by which the lessee must produce coal from the lease in commercial quantities has gone into effect, and the lessee wants to retain the lease. Such payment would be the equivalent of the royalty that would be due based on the minimum production in commercial quantities requirement.

Thank you for your informative testimony at the Committee's hearing. I look forward to your reply.

With kindest regards,

Sincerely,

J. Bennett Johnston
Ranking Minority Member

1983 DEC -1 PM 1:42

4501 Arlington Blvd., Apt. 805
Arlington, VA 22203

November 29, 1983

Honorable J. Bennett Johnston
Senate Energy Committee
136 Hart Building
Washington, DC 20510

Dear Senator Johnston:

In your letter of October 24 you asked for comments on five possible amendments that might be offered to S1634, a bill to amend the Mineral Leasing Act of 1920. The questions and my comments on each follow.

> 1. Provide that leases issued prior to August 4, 1976 for which an operation and reclamation plan, as provided for under 30 U.S.C. 207(c), is not submitted by August 4, 1986, shall be automatically terminated by operation of law.

It would appear that as drafted the amendment could be counteproductive. A wealthy leaseholder, and this describes many lessees who could be adversely affected by Section 3, would be able to meet this requirement and then not develop the lease until the lease had to be renegotiated. The small leaseholders, many of whom would not currently be adversely affected by Section 3, may not be able to meet the requirement of this proposed amendment and would have to forfeit the lease. This could discriminate against small operators whom Congress normally intends to protect.

> 2. Provide that leases issued prior to August 4, 1976 for which an operation and reclamation plan has been submitted, but upon which coal production or significant surface disturbance has not begun, may be relinquished by the lessee. Currently,lessees are required to acquire DOE's approval before they may relinquish their lease.

Apparently there is sufficient doubt in the legal community about current lease relinquishment provisions that such an amendment would be useful in clarifying the status of this part of existing leasing law.

> 3. Provide that the prohibition on obtaining mineral leases, applied to lessees who fail to meet the 10 year production in commercial quantities requirement under 30 U.S.C. 201(a)(2)(A), shall be limited to the issuance of Federal coal leases, rather than to all mineral leases subject to the Mineral Leasing Act of 1920. The law should clarify that once a lessee meets the production requirements (currently defined by

Department regulations as one percent of the recoverable coal reserves), the prohibition on obtaining additional mineral leases is no longer applicable.

This proposed amendment provides no rationale for disqualifying a lessee holding a pre-1976 coal lease from bidding on future coal leases while allowing a lessee who might hold undeveloped leases of other minerals to continue to bid on new leases of these other minerals. Moreover, a lessee who was producing in commercial quantities on a coal lease (either pre- or post-1976) and who also had a pre-1976 lease that was not in production would be unable to bid on bypass, intertract, or production maintenance leases. This could result in inefficient use of federal resources by early abandonment of the lease, large financial losses to the operator and undesirable dislocations to the labor force and surrounding communities. Even during moratorium periods, these types of leases have continued to be offered to avoid such undesirable economic losses to all parties.

4. Provide that the royalty on leases issued prior to August 4, 1976 which have not achieved production in commercial quantities on August 4, 1986 shall be increased along a sliding scale until such time as production is achieved. For example, the law could provide that the royalty for such leases would be increased on September 1, 1986 by 50 percent and by 50 percent each September 1 thereafter, but in no event would this exceed the current statutory rate of 12 1/2 percent. This would not change the Secretary's authority to lower the royalty rate for underground mining.

Royalties at any level can lead to economic inefficiencies since they result in earlier abandonment of a lease than would otherwise occur, since royalties add to operating costs. Imposition of a schedule of escalating royalties on undeveloped pre-1976 leases would impose no immediate increase in the cost of holding the lease. On the other hand, the higher royalties that would be imposed in the future on that lease if it were developed might prevent its eventual development and, if it were developed, in its earlier abandonment.

5. Provide that lessees may make a payment in lieu of actual production if the date by which the lessee must produce coal from the lease in commercial quantities has gone into effect, and the lessee wants to retain the lease. Such payment would be the equivalent of the royalty that would be due based on the minimum production in commercial quantities requirement.

This proposed amendment would seem to serve essentially the same purpose as proposed amendment 4 and with more economic efficiency. In lieu of production, payments would be viewed as "sunk costs" rather than operating costs so that they would not force early abandonment of a lease once in production. It could also provide more flexibility in the administration of leases. A detailed study would be needed to arrive at the "best" method to establish a "fair" level of payment in lieu of actual production and that would prevent retaining leases for excessive periods without their development.

Sincerely,

Harry Perry
Consultant

Mobil Alternative Energy Inc.

150 EAST 42ND STREET
NEW YORK, NEW YORK 10017

R.R. NEYREY
VICE PRESIDENT
PLANNING AND DEVELOPMENT

December 6, 1983

The Honorable J. Bennett Johnston
Hart Senate Office Building 136
Washington, D.C. 20510

Dear Senator Johnston:

Thank you for affording me the opportunity to clarify and amplify my response to the questions you posed during the October 18 hearing on S.1634. I am also pleased to respond to your letter of October 24 and will treat each question which you have posed, separately. However, before doing that I believe a few general observations are called for. As you know, Mobil has invested over $100 million in its federal coal lease, and through vigorous marketing efforts expects to ship about 2 million tons per year of federal coal by the 1986 deadline. We believe that through these and other actions we have complied with Congressional intent. However, due to the ambiguities associated with the application of Section 3, the standard of compliance is not clear. Thus, we are alarmed, especially since the penalties would bar any leaseholder found in non-compliance from competing in lease sales for not only coal but onshore oil and gas and the emerging federal leasing programs for oil shale and tar sands as well. Consequently, we are encouraged by your interest in resolving the Section 3 issue.

Although Mobil continues to encourage the Department of Interior to provide some answers to the many questions Section 3 evokes, we recognize that the real key to Section 3 relief lies in legislative action. We strongly support S. 1634 and reaffirm our belief that repeal of this contentious statutory provision is the best solution. We would note that the Linowes Commission shares a similar view on this matter, as reflected in its recently released proposed recommendations. Nevertheless, we appreciate your interest in examining alternative approaches.

Because of the broad, conceptual nature of the revisions proposed in your letter of October 24, and some uncertainty as to the exact context in which they are offered, we can provide only general responses at this time. Nevertheless, we believe that your proposals represent a significant step toward providing needed relief. We hope that our remarks, which have been keyed to your five proposed amendments, will open a dialogue that will lead to more definitive contributions by both parties and ultimately to a resolution of this thorny problem.

> "1. Provide that leases issued prior to August 4, 1976 for which an operation and reclamation plan, as provided for under 30 U.S.C. 207(c), is not submitted by August 4, 1986, shall be automatically terminated by operation of law."

Regarding this first proposal, we believe that the operation and reclamation plan is not a particularly appropriate mechanism to promote diligence. In our view, lessees should be encouraged to prepare and refine such a plan so that it serves as a useful tool for development. Placing a stringent time requirement on its preparation and using that deadline to trigger a sanction can undermine this fundamental purpose. However, given the circumstances surrounding Section 3 and the liberal time frame you suggest, we believe that the concept underlying your proposal can be developed into a workable and reasonable provision. This presumes, of course, that the plan would be general in nature and that a liberal amendment policy would prevail.

One other aspect of the first amendment deserves comment. The penalty you recommend, that of automatic termination of the lease, raises serious legal questions regarding the mandatory forfeiture of vested property rights. We suggest that a more acceptable sanction might be to offer a lessee the option to relinquish the delinquent lease or be barred from obtaining any further coal leases until the Section 3 production requirement is met.

> "2. Provide that leases issued prior to August 4, 1976 for which an operation and reclamation plan has been submitted, but upon which coal production or significant surface disturbance has not begun, may be relinquished by the lessee. Currently, lessees are required to acquire DOI's approval before they may relinquish their lease."

An amendment of this nature, one that would permit the unqualified relinquishment of leases until a critical point in the sequence of development is reached, would serve a useful purpose. We would, however, recommend that lack of submission of the operation and reclamation plan not be a bar to such relinquishment.

> "3. Provide that the prohibition on obtaining mineral leases, applied to lessees who fail to meet the 10 year production in commercial quantities requirement under 30 U.S.C. 201(a)(2)(A), shall be limited to the issuance of Federal coal leases, rather than to all mineral leases subject to the Mineral Leasing Act of 1920. The law should clarify that once a lessee meets the production requirements (currently defined by Department regulations as one percent of the recoverable coal reserves), the prohibition on obtaining additional mineral leases is no longer applicable."

This proposed amendment is encouraging in several respects. We firmly support your view that any legislative modification of Section 3 should specify that, if a leasing bar is imposed, it will extend only to the issuance of new federal coal leases. Such amendatory language would rectify a fundamental inequity in the existing statute by bringing the sweep of the sanction more in line with the violation.

We agree also with the intent of the second sentence of this proposed amendment. Explicit reference in the statute that the leasing bar, if imposed, would be lifted upon achieving commercial production would clarify one of the ambiguities inherent in Section 3.

We would, however, strongly advise against the use of statutory language or commentary in the legislative record that reflects support for the existing regulatory definition of the production requirement which demands the extraction of a percentage of recoverable reserves from a given lease. It is the unrealistically narrow scope of and the ambiguity associated with the Department of Interior's current regulatory definition of producing in "commercial quantities" that prompts our concern that we might be found in non-compliance with Section 3 in spite of the extensive effort we have made in developing our federal lease into an operating mine. As our statement on S. 1634 reflects, the imposition of a fixed and arbitrary level of production is unreasonable and counterproductive. Although we believe that the Secretary of Interior should retain the authority to define the production requirement, he or she should be encouraged to do so in terms broad and flexible enough to accommodate a spectrum of activities reflecting good faith demonstration of mine development, as well as the realities of the market. We would hope that any proposed amendment to Section 3 would reflect such intent on the part of the Congress.

> "4. Provide that the royalty on leases issued prior to August 4, 1976 which have not achieved production in commercial quantities on August 4, 1986 shall be increased along a sliding scale until such time as production is achieved. For example, the law could provide that the royalty for such leases would be increased on September 1, 1986 by 50 percent and by 50 percent each September 1 thereafter, but in no event would this exceed the current statutory rate of 12 1/2 percent. This would not change the Secretary's authority to lower the royalty rate for underground mining."
>
> "5. Provide that lessees may make a payment in lieu of actual production if the date by which the lessee must produce coal from the lease in commercial quantities has gone into effect, and the lessee wants to retain the lease. Such payment would be the equivalent of the royalty that would be due based on the minimum production in commercial quantities requirement."

We find ourselves in agreement with what we believe to be the fundamental purpose of the fourth and fifth elements of your proposal. There is little doubt that an amendment permitting some other form of payment in lieu of actual production with or without a graduated increase in existing royalty rates could provide the flexibility needed to deal with fluctuations in market conditions that is lacking under the existing statute. Many variables would be involved in formulating and implementing such a scheme, however, virtually all of which would impact on its attractiveness. Some of the more important that come to mind include the exact rate and/or amount of payment to be made, the recoupability of the monies involved, the flexibility afforded the administrator in implementing the program and the options available to the lessee regarding payment. We would caution also that an advance royalty arrangement that would increase royalty rates for pre-1976 lease holders prior to their next scheduled readjustment would again raise questions concerning interference with vested property rights. Although these factors complicate the process, it is not impossible to deal with them. For this reason, we believe both of these schemes worthy of more detailed consideration.

As we mentioned earlier, we offer these preliminary comments in the hope that they will lead to a more detailed exchange of views. If you find them beneficial, we would be happy to discuss our views with you and your staff and provide any other assistance we can in developing a legislative proposal. Again, we appreciate your interest in resolving this controversial issue.

Very truly yours,

R. R. Neyrey

RRN/meb

cc: The Honorable John W. Warner
The Honorable Malcolm Wallop

Western Regional Council

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Chief Executive Officer
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November 8, 1983

1983 NOV 10 PM 12: 33

The Honorable J. Bennett Johnston
Ranking Minority Member
Committee on Energy and Natural Resources
The U.S. Senate
136 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Johnston:

During Senate Energy Committee hearings on S. 1634 on October 18, you asked the Western Regional Council's witness, John Hardin, and others to react to possible amendments to that bill. In a letter of October 24, you reiterated that request in a letter to John Hardin and listed five alternative approaches to amending the bill repealing Section 3 of the Federal Coal Leasing Amendments Act of 1976. This letter is the Western Regional Council's response.

The Western Regional Council would first point out that the preponderance of outstanding pre-1976 coal leases will be readjusted during the 1980's to reflect the higher royalty rates stipulated in the FCLAA.

The WRC believes repeal of Section 3 is still the best solution to the problem. However, the WRC would support an amendment to S. 1634 that would include components of your five options as follows:

1. Your number 3. The prohibition on obtaining mineral leases, applied to lessees who fail to meet the 10 year production in commercial quantities requirement under 30 U.S.C. 201(a)(2)(A), shall be limited to the issuance of Federal coal leases, rather than to all mineral leases subject to the Mineral Leasing Act of 1920. The law should clarify that once a lessee meets the production requirements, the prohibition on obtaining additional mineral leases is no longer applicable.

2. A provision to allow a lessee to relinquish leases issued prior to August 4, 1976 without acquiring approval by the Department of the Interior and thereby be absolved of the leasing prohibition constraint;

3. A provision to recognize good faith lessees who have proceeded with lease development, received approval to commence mining operations, and are constructing a mine or producing coal but will not reach commercial

P.O. Box 8144, Salt Lake City, Utah 84108   Telephone (801) 363-7997

Senator J. Bennett Johnston
November 8, 1983
Page 2

quantities by August 4, 1986. Compliance with Section 3 would be satisfied by evidence of these diligence activities, submitted by the lessee, and approved by the Department of the Interior.

4. A provision which would allow the consolidation of production from one or more federal leases within a mine plan area to satisfy the commercial quantities requirement of Section 3 for all federal leases contained within that mine plan area. Note: This would allow the lessee to follow an economically reasonable mine sequence rather than independently mine each federal lease within the mine plan simply to comply with Section 3.

5. Provide that lessees may satisfy the production requirement by payment of reasonable advanced royalties in lieu of production in commercial quantities if the date by which the lessee must produce coal from the lease in commercial quantities has gone into effect, and the lessee wants to retain the lease and continue to be eligible to participate in Federal coal leasing.

We appreciate your interest in seeking workable approaches to resolve the problems inherent in the inflexibility of Section 3 and look forward to working with you to move ahead in considering the legislation.

Respectfully yours,

James C. Wilson /jls

James C. Wilson
Chairman
WRC Coal ad hoc Committee

ROCKY MOUNTAIN
ENERGY

A Subsidiary of
Union Pacific Corporation

Edward C. Gibbs
Vice President and General Manager
Co

1983 NOV 18 PM 1:43

November 11, 1983

Honorable Bennett J. Johnston
Ranking Minority Member
Senate Energy and Natural
Resources Committee
136 Hart Office Building
Washington, D.C. 20510

Dear Senator Johnston:

I am pleased to respond to your letter of October 24 concerning five alternative approaches to amending S.1634, which provides for repeal of Section 3 of the Federal Coal Leasing Act Amendments of 1976. We strongly agree with amendments 3 and 5 which call for limiting the Section 3 prohibition to issuance of federal coal leases and for payment of advance royalties in lieu of actual production. Since we feel that amendments 3 and 5 are the principal components of modifying Section 3, our consideration of proposed amendments 1, 2 and 4 is addressed in that context.

Our recommendations are as follows:

1. Rocky Mountain Energy has some concerns about legislatively amending existing leases retroactively. Further, we think nonproduction is the real issue which should be addressed and substitution of administrative remedies will only make the job of managing federal coal more difficult. If a leaseholder must produce coal in commercial quantities within ten years or forfeit the lease (or in the case of a pre-FCLAA lease be barred from future leasing), no additional requirement is necessary. Further, all leaseholders should be cognizant of the time requirements for mine permitting and will provide for this in their schedule. If you accept the notion that we should not substitute such a requirement for nonproduction, this stipulation would only put an additional burden on the lease with no commensurate benefit.

10 Longs Peak Drive
Box 2000
Broomfield, Colorado 80020
303 469-8844
[illegible]

2. It is our understanding that a lease issued prior to August 4, 1976, for which coal production in commercial quantities has not begun, may be relinquished at any time. While relinquishment requires approval by the Interior Department, it has been our experience that such approval is routine. More important is the issue of whether pre-FCLAA leaseholders will be allowed to keep nonproducing leases for substantially longer periods without penalty than holders of post-FCLAA leases.

   Holders of nonproducing leases should be allowed to relinquish them at any time, subject only to reclamation obligations incurred and maximum economic recovery regulations.

3. Rocky Mountain Energy agrees that the prohibition on obtaining mineral leases, applied to lessees who fail to meet the ten year production requirement under Section 3 of FCLAA, should only be limited to issuance of new federal coal leases. There is no reason to give different treatment to companies whose business lines, or whose parent or affiliated company's business lines, vary from companies solely in the coal business. No other mineral leasing program is subject to similar penalties.

   We believe Congress intended in the present act to remove the leasing prohibition once the lessee meets the production requirements or the lease is relinquished. There would be little justification to carry the penalty past these points.

4. Please refer to my comments on proposed amendment No. 1. While we have no problem with an earlier adjustment to current royalty rates per se, holders of pre-FCLAA leases (which includes RME) have an agreement with the federal government which both parties entered into willingly. The agreement allows for royalty rates to be renegotiated at fixed intervals (every 20 years). To arbitrarily change those terms seems inappropriate. As a practical matter, since very few leases were issued in the 1970s, most existing leases will, in fact, be readjusted in the 1980s to 12.5 percent royalty rates.

5. As stated previously, we much prefer economic diligence to an inflexible fixed-time requirement. RME, being a major lessor of coal development properties in the Western U.S., uses advance royaltes to provide our lessee with development incentives.

In structuring advance royalties, it would be reasonable to set a rate equivalent to the royalty that would be due based on the minimum production in commercial quantities requirement.

Perhaps a further word on advance royalties would be useful. Advance royalty payments can be structured in many ways, but they are generally structured in such a manner that the payments are recoupable out of production royalty payments. That is, when production begins and the level of production exceeds the level at which the advance royalties were established, production royalties are excused, dollar for dollar, until the excused production royalty payments equal the "banked" advance royalty payments. From that point on, production royalties are the only payments made (unless, of course, production is temporarily halted and advance royalty payments are made in lieu of continued production under current regulations).

RME very much appreciates the time and thought you have put into making Section 3 workable in the best interest of coal consumers and producers. We look forward to working with you in resolving this important issue.

Sincerely,

Edward C Gibbs

Edward C. Gibbs
Vice President and General
Manager-Coal

cc: Senator Malcolm Wallop

NATIONAL
COAL
ASSOCIATION

COAL

1983 DEC -7 PM 1:39

December 6, 1983

The Honorable J. Bennett Johnston
Ranking Minority Member
Senate Energy Committee
136 Hart Building
Washington, D. C. 20510

Dear Senator Johnston:

On behalf of the National Coal Association and the American Mining Congress, thank you for your participation in the October 18 hearing on S. 1634. We look forward to working with you and your staff as this legislation progresses and hope that our comments which follow, responding to your letter of October 24 will expedite this process.

The relief being sought by the industry is sound in concept and specifics; and legislative action is of critical importance to the solving of the problem addressed by the Congress in this pending legislation.

Your leadership on this issue is deeply appreciated, and we earnestly solicit your good offices in achieving prompt enactment of the measure.

We will welcome every opportunity you provide us to assist you in bringing about early action on this essential piece of legislation.

General Comments

Section 3 of the Federal Coal Leasing Amendments Act of 1976 (FCLAA) continues to be one of the most onerous and burdensome provisions facing the domestic mineral industry. Its impact, if enforced, will significantly diminish competition for future federal mineral resources having enormous and lasting impacts not only on the structure of the Western coal industry and subsequent nation-wide costs of coal, but also on the orderly development of other domestic energy and mineral supplies that are essential to this country's economic and strategic future. We continue to maintain that repeal of this provision is the only way to assure orderly development of federal mineral resources to meet the growing needs of our economy.

In 1976 Congress adopted, over President Ford's veto, the FCLAA as a means to: (1) diminish speculation in future federal coal leases and (2) force production from leases granted prior to enactment of the amendments (Section 3). We maintain that the

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problems Congress perceived no longer exist and that many of the provisions of the FCLAA, primarily Section 3, have become counterproductive and may encourage exactly what Congress was attempting to cure. To maintain the provisions of Section 3 will create an anti-competitive situation that would not be in the best interest of the government, the consumer or the nation's energy producers.

With this in mind, following are our preliminary comments on the elements contained in your letter. We hope to continue this dialogue with you and your staff.

Specific Comments

1. Provide that leases issued prior to August 4, 1976 for which an operation and reclamation plan, as provided for under 30 U.S.C. 207(c), is not submitted by August 4, 1986, shall be automatically terminated by operation of law.

Response:

One of the concerns of Congress in 1976 which led to the development and enactment of Section 3 was whether Congress could legislate changes to a lease during its primary term prior to readjustment. Many have argued that a lease represents a contractual agreement between the federal government and the lessee and that altering its terms prior to readjustment constitutes a taking. This view was echoed by Interior Solicitor William Coldiron who in his 1981 memo entitled, "Whether leases issued prior to August 4, 1976 subject to readjustment after that date must be redjusted to conform to the Federal Coal Leasing Amendments Act of 1976," stated, "Congress intended that the FCLAA not affect pre-FCLAA leases before those leases become subject to readjustment...." The same question arises under this amendment in that for pre-76 leases, an operation and reclamation plan (referred to as a resource recovery and reclamation plan under DOI regulations, 30 C.F.R. 211.10(b)) is not required to be submitted until three years following the first lease readjustment after August 4, 1986, thereby raising legal questions as to the right to terminate a lease for failure to comply with a requirement which is not yet operative. Further, the amendment does not address the question of whether compliance with the mine plan requirement removes the prohibition on additional leasing.

Further and equally important, another provision in S.1634 addresses the burdensome nature of the three-year mine plan. This amendment would defeat the purpose of Section 4 of S.1634.

2. Provide that leases issued prior to August 4, 1976, for which an operation and reclamation plan has been submitted, but upon which coal production or significant surface disturbance has not begun, may be relinguished by the lessee. Currently, lessees are required to acquire DOI's approval before they may relinguish their lease.

Response:

Many questions have arisen regarding the ability of lessees to relinquish a federal coal lease. While the Interior Department has never rejected a lease which a lessee wanted to relinquish, there does exist a requirement that the Secretary find that "it is in the public interest" for a lease to be relinquished. The uncertainty created by this requirement is of particular concern to the coal industry and we support your intention to clarify this matter. We are concerned, however, that your requirement that an "operation and reclamation plan has been submitted, but upon which coal production or significant surface disturbance has not begun," may be counterproductive. We would urge that this phrase be deleted.

3. Provide that the prohibition on obtaining mineral leases, applied to lessees who fail to meet the 10 year production in commercial quantities requirement under 30 U.S.C. 201(a) (2) (A), shall be limited to the issuance of Federal coal leases, rather than to all mineral leases subject to the Mineral Leasing Act of 1920. The law should clarify that once a lessee meets the production requirements (currently defined by Department regulations as one percent of the recoverable coal reserves), the prohibition on obtaining additional mineral leases is no longer applicable.

Response:

On July 30, 1983, in response to Congressional concerns that the federal government was not receiving an adequate return for its coal resources, the Commission on Fair Market Value Policy for Federal Coal Leasing was established. One of the fundamental goals of the Commission is to foster competition for federal coal leases thereby assuring that "fair market value" is received.

Earlier this year NCA commissioned Harry Perry of Resources for the Future to undertake An Evaluation of Selected Provisions of the Federal Coal Leasing Amendments Act of 1976. In his report Mr. Perry found that 20 of the 32 coal leases awarded since the resumption of leasing were awarded to Section 3 leaseholders. These same companies also made 16 unsuccessful bids on 12 other coal leases. Clearly, an amendment limiting the prohibition to obtaining new federal coal leases runs counter to the intended goal of the Commission and will diminish rather than foster competition.

We do not believe that our industry should be singled out as the only energy segment to face such an onerous provision. Many coal operators have made great strides to develop these older reserves only to be thwarted by conditions beyond their control. The simple fact is that the market has not developed fast enough to absorb this production. Certainly they should not be penalized as this amendment would do.

Further and equally troublesome is the attempt to clarify the production requirement as is done in the last sentence of the amendment. Through follow-up meetings with your staff, we have learned that under this amendment an operation could slip in and out of compliance. We find this to be wholly unacceptable in that it would create havoc and uncertainty.

4. Provide that the royalty on leases issued prior to August 4, 1976 which have not achieved production in commercial quantities on August 4, 1986 shall be increased along a sliding scale until such time as production is achieved. For example, the law could provide that the royalty for such leases would be increased on September 1, 1986 by 50 percent and by 50 percent each September 1 thereafter, but in no event would this exceed the current statutory rate of 12 1/2 percent. This would not change the Secretary's authority to lower the royalty rate for underground mining.

Response:

The same contractual problems which were raised in response to the first amendment are also relevant under this amendment.

Section 6 of the FCLAA amended section 7 of the Act, 30 U.S.C. section 207 (1976), to read in part: "Such rentals and royalties and other terms and conditions of the lease will be subject to readjustment at the end of its primary term of twenty years and at the end of each ten-year period thereafter if the lease is extended." (Emphasis added.)

Under your amendment, the royalty rate on certain leases, which are not scheduled to be readjusted until after August 4, 1986, would be increased prior to that time. Such a scenario is inconsistent with the legislative history of the Mineral Lands Leasing Act and its amendments and may result in protracted and unncessary litigation.

Additionally, we are uncertain what relief a pre-76 leaseholder would be granted under this amendment. Would the escalation of the royalty rate satisfy the requirements of Section 3? Would a lessee remain subject to the prohibition contained in the law?

5. Provide that lessees may make a payment in lieu of actual production if the date by which the lessee must produce coal from the lease in commercial quantities has gone into effect, and the lessee wants to retain the lease. Such payment would be the equivalent of the royalty that would be due based on the minimum production in commercial quantities requirement.

Response:

While this amendment may present a possible solution to the many complex and difficult problems caused by Section 3, neither NCA nor AMC has reviewed this in the detail necessary to judge its acceptability. Generally, we believe that in considering the use of an advance royalty, the starting point should be the question "is this consistent with the government's overall coal leasing objectives?" To establish an advance recoupable royalty at a level equivalent to the value of a production royalty on the minimum production would have exactly the same adverse effect as if Section 3 were enforced. Ideally, the level of an advance royalty should be merely high enough to create a reasonable decision point but not so high as to force premature relinquishment of the lease.

Before this concept can be fully evaluated, fundamental questions need to be answered.

A. Will payment of the advance royalty remove the leasing prohibition?

B. How would the royalty be calculated?

C. Will the production royalty be reduced by the amount of any advance royalties?

D. What will occur once a lease upon which advance royalties are being paid is readjusted and now subject to the 10-year diligent development requirement?

Again, thank you for this opportunity to offer our comments. We look forward to working with you on this issue of critical importance.

Sincerely,

R M Holsten
Richard M. Holsten, Jr.
Chairman & President
Pittsburg & Midway Coal Mining Co.

B. R. Brown
Chairman and Chief Executive Officer
Consolidation Coal Company

CK McArthur
C. K. McArthur
Senior Vice President & Manager
Western Hemisphere Mining Group
Utah International, Inc.

cc: Honorable James McClure
Honorable John Warner

LM

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Curtis W. Foster
General Manager

December 20, 1983

The Honorable J. Bennett Johnston
Ranking Minority Member
Senate Energy Committee
136 Hart Building
Washington, D. C. 20510

Dear Senator Johnston:

On October 18, I appeared before the Subcommittee on Energy and Mineral Resources and presented testimony in support of S. 1634, a bill to amend the Mineral Leasing Act of 1920 (MLA) by repealing Section 2 (a) of the MLA (Section 3 of the Federal Coal Leasing Amendments Act of 1976). At that time, you requested that I respond to several alternatives to outright repeal of Section 3's leasing ban. In a letter of October 24, 1983, you reiterated that request and specifically set forth five alternative approaches to outright repeal. This letter is in response to your inquiry.

First, let me stress that it remains my opinion that the simplest and best solution to the problems created by Section 3 is the outright repeal of the leasing ban. In lieu of such repeal, something must be done to relieve the inequitable burden which will befall good faith lessees who have expended substantial time and funds on the development of their leases but still may fail to meet the rigid "commercial quantities" test of Section 3. With this in mind, set forth below are my comments to the five alternatives contained in your letter of October 24. I might point out that my responses are in accord with those previously submitted to you by Mr. James C. Wilson on behalf of the Western Regional Council.

1. Provide that leases issued prior to August 4, 1976, for which an operaton and recovery plan, as provided for under 30 U.S.C. 207(c), is not submitted by August 4, 1986 shall be automatically terminated by operation of law.

Comments:

You should be cognizant of the fact that the operation and reclamation plan (referenced as a resource recovery and protection plan under 30 C.F.R. § 211.10(b) is not required to be submitted by any federal lessee holding a pre-1976 lease until three years after the effective date of the lease readjustment. Consequently, as pointed out by Mr. Carl Bagge in his comments to your proposals on behalf of the National Coal Association, such a new requirement might raise legal issues as to the government's right to terminate a lease for failure to comply with a prospective requirement. As a result, it might be advisable for you to consider some other demonstrative method of compliance, such as substantial capital commitments to mine development relative to the federal coal leases in question.

2. Provide that leases issued prior to August 4, 1976, for which an operation and reclamation plan has been submitted, but upon which coal production or significant surface disturbances has not begun, may be relinquished by the lessee.

Comments:

a. This provision would appear only to be applicable to surface mining operations. "Significant surface disturbance" for an underground mine would necessarily be located in one location, which would be the site of the mine support facilities. The mining of other federal leases within an underground mine plan area would, in all likelihood, not result in any additional "significant surface disturbances." Consequently, I would suggest this proposal be modified to recognize underground mine operations upon federal coal leases.

b. You should also consider the plight of the good faith lessee who has proceeded with lease developments, received approval to commence mining operations from local, state and federal authorities, and has constructed a mine and/or is producing coal but may not reach the production requirements of Section 3 by August 4, 1986 from each lease located within his mine plan area. This situation is often the result of the fact that the lessee's mine plan area contains several federal leases. Consequently, the lessee will generally follow an economically reasonable mining sequence rather than independently mine each federal lease within the mine plan area. Given this situation, you should consider the modification of Section 3 to allow satisfaction of the "commercial quantities" production requirement by evidence of a variety of other diligent development activities such as significant mine development expenditures (e.g., mine permitting, mine construction, etc.) or the entrance by the lessee into long term sales contracts for coal produced from the leases within the mine plan area as alternatives to actual production of "commercial quantities" of coal from each lease with a mine plan area. Evidence of such activities could be submitted to the BLM for review and approval.

c. You should also give consideration to the consolidation of production from federal leases within a mine plan area, in satisfaction of the commercial quantities requirement of Section 3 for all federal leases contained within that mine plan area. Such an approach would involve: (a) the determination of total recoverable reserves of all federal leases contained within the mine plan area; and (b) production of one percent of the total recoverable reserves from any one lease as meeting Section 3 production compliance for all the leases within the "unitized" mine plan area. Once again, this approach would recognize the economically reasonable mining sequence usually selected by the prudent lessee as opposed to the rigid and illogical independent mining of each federal lease currently mandated by Section 3.

3. Provide that the prohibition on obtaining mineral leases, applied to lessees who failed to meet the ten-year production and commercial quantities requirement under 30 U.S.C. 201(a)(2)(A), shall be limited to the issuance of Federal coal leases, rather than to all mineral leases subject to the Mineral Leasing Act of 1920. The law should clarify that once a lessee meets the production requirements (currently defined by Department regulations as one percent of the recoverable coal reserves) the prohibition on obtaining additional mineral leases is no longer applicable.

Comments:

a. This proposal recognizes the truly onerous provisions of Section 3 which appear to single out coal producers for harsh sanctions applicable to no other federal mineral lessees. I would suggest that this proposal to limit the leasing ban to coal should contain an exemption for emergency and bypass leases. This exemption would be based on the economic reality that both the distressed lessee who needs additional coal to continue an on-going operation, and the federal government, the recipient of production royalties, would both benefit from this limited exemption to a general coal leasing ban.

b. I applaud your attempt in the last sentence of the proposal to develop a clear standard of finality for Section 3 compliance. However, such a standard must be exceedingly clear in its definition and scope so as to let the prudent lessee know when and how he will reach Section 3 compliance.

4. Provide that royalty on leases issued prior to August 4, 1976 which have not achieved production of commercial quantities on August 4, 1986, shall be increased along a sliding scale until such time as production is achieved. For example, the law could provide that royalty for such leases would be increased on September 1, 1986 by 50 percent and by 50 percent each September 1 thereafter, but in no event would this exceed the current statutory rate of 12-1/2 percent.

Comments:

a. Any such sliding scale increase for production royalties should be based upon the royalty then applicable to the lease (i.e., cents-per-ton or percentage).

b. To bring such a "sliding scale" in line with similar provisions in private fee leases, I would suggest that the initial increase be a lower percentage than in the example cited in your proposal with increases progressively escalated to place pressure upon the lessee to meet the production requirement.

c. The proposal also leaves open the question of the amount of the royalty rate on a non-adjusted lease subsequent to achieving Section 3 production.

d. The potential contractual problems raised in reference to your first proposal discussed above may also be applicable here as well. This assumption is based upon the fact that your proposal would increase royalty rates on pre-1976 leases prior to their readjustment date. The current statute provides that such royalty rates may be raised until readjustment. This fact, and the likelihood that the royalty readjustment of the majority of pre-1976 leases will occur by the end of this decade, may make the sliding scale production royalty concept impractical.

5. To provide that lessees may make a payment in lieu of actual production if the date by which the lessee must produce coal from the lease and commercial quantities has gone into effect, and lessee wants to retain the lease. Such payment should be equivalent of the royalty that would be due based on the minimum production and commercial quantities requirement.

Comments:

a. We believe the concept of payment of advance royalties in lieu of production is yet another alternative to repeal of Section 3. However, based upon the format of the above proposal, we are uncertain as to how such a royalty would be calculated. Thus, we would appreciate clarification on this point.

The level of any advanced royalty must be kept at a reasonable level with possibly some scheduled increase over time. An alternative which required an immediate payment of an equivalent amount based on commercial quantities production could be just as harsh as Section 3 and could result in the premature relinquishment of many leases".

b. In lieu of an advanced royalty based upon the cumbersome and complicated calculation of "commercial quantities" we would suggest that some thought be given to the use of a reasonable dollar per acre formula. This type of formula would prove far easier to administer and would allow both the lessee and the Government to accurately calculate the cost of such a royalty.

c. Any advanced royalties should be recoupable against production royalties.

d. The current structure of this proposal leaves unanswered the question of whether the payment of the advance royalty would stay or remove the leasing proscription.

I appreciate your recognition of the problems created by Section 3 and their potential economic impact upon good faith coal lessees. If my staff or I can be of any additional assistance relative to this matter, please contact me.

Respectfully yours,

Curtis W. Foster

cc: J. H. Desautels/DAT-1967
L. D. Milner/DAT-1844
B. L. Odom/DAT-3627

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1983 DEC 13 AM 10 35

December 8, 1983

The Honorable Bennett Johnston
Senate Committee on Energy and Natural
Resources
316 DSOB
United States Senate
Washington, D.C. 20510

Dear Senator Johnston:

Thank you for your letter of October 24 in which you asked us to comment upon five possible alternatives to S. 1634. In addition to our thoughts regarding these five options, we have attached some comments in response to portions of the testimony received by the Energy and Mineral Resources Subcommittee at its October 18 hearings on S. 1634. Although we are not necessarily opposed to the introduction of some flexibility into the requirements imposed by Section 3 of the Federal Coal Leasing Amendments Act (FCLAA), as our response to your five proposals makes clear, we do not believe that the industry has made a convincing or legitimate case for its outright repeal. For example, it is apparent that two companies which alleged during the October 18 hearing that Section 3 posed threats to their existing mining operations in actuality demonstrated in their presentations that either (1) the provisions of Section 3 could be met by 1986, or (2) the flexibility that already exists in the rules governing the administration of Federal coal leases will allow compliance with Section 3 by the 1986 deadline (see pp. 2-4 of Appendix I to this letter). As we pointed out in our statement to the Subcommittee on October 18, there are numerous federal coal leases in the possession of companies that will, by 1986, have been held for 15-20 years and longer, with no development prospects in sight. The continued non-productive, speculative holding of these leases serves no legitimate public purpose.

Turning now to our comments on the five options posed by your letter:

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1. We support the first option. It would have the effect of clarifying Section 7(a) of FCLAA which states:

> "...Any lease which is not producing in commercial quantities at the end of ten years shall be terminated...."

Though the ten-year diligence requirement for pre-FCLAA leases imposed by the Ford Administration was lengthened by the rules published on July 30, 1982 to ten years from the date of first lease readjustment, this amendment would once again place the pre-FCLAA leases on the same footing with all post-FCLAA leases. Because by 1986 a great many of the lessees holding pre-FCLAA leases will have held them for roughly 20 years (since most of such leases were issued in the mid-to-late '60's period), there is nothing inequitable about requiring diligence by the 1986 date, especially in view of the fact that it was clearly Congress' intent in 1976, through the adoption of Section 3 of FCLAA, that the continued holding of these non-producing leases beyond 1986 be discouraged. In fact, the argument can be made that Congress was not more explicit about the 1986 deadline for old leases in FCLAA because of the existence at the time of the 10 year development requirement imposed by the Ford Administration prior to passage of FCLAA.

2. Regarding amendment #2, we have no objection to permitting lessees to relinquish their leases without DOI approval, as long as the lessee has not incurred responsibilities for surface or other disturbance. This opportunity should be afforded to lessees who have not submitted operation and maintenance plans as well, and might be considered for operation in tandem with option #1.

3. Regarding amendment #3, we have no comments, other than as stated it is a generous compromise to the coal industry.

4. As written, proposal number 4 seems to provide that actual payments in lieu of diligent development need not be made beginning in the first year after August 4, 1983. Instead, the proposal seems to provide for the deferred payment in lieu of diligence until some undefined date in the future. Furthermore, the proposal does not provide for payments commensurate with a 12-1/2 percent royalty on production of 1 percent of reserves, which would be the minimum rate of return to the government if the tract were re-issued as a new lease meeting the diligent production requirement. Because of these deficiencies, we do not support this proposal.

5. The effect of option 5 would be to permit lessees with pre-FCLAA leases to hold those leases until 10 years after lease readjustment (thus ratifying the Department's current interpretation of Section 7 of FCLAA as it applies to pre-FCLAA leases), and then permit payments in lieu of diligent development, if diligence has not been met by the end of the ten-year period. The diligence period for most of the pre-FCLAA leases, therefore, would not begin until the mid-to-late 1980s, and diligence would not have to be met, nor payments in lieu required, until the mid 1990s to 2000. Since this proposal amounts to both outright repeal of Section 3, and also amends Section 7 to provide for payments in lieu of diligent development--a subject not addressed in S. 1634 nor any hearings to date in the 98th Congress--we firmly oppose this option.

In summary, we believe that Section 3 serves a vital function within the Federal government's coal leasing program. Though the penalties of Section 3 may seem harsh, in reality the behavior of Section 3 lessees in complying with or evading its provisions will have beneficial effects on both the coal industry and the Federal coal leasing program. For example, the leases which may be returned to the government can be re-issued under terms of FCLAA, with receipt of bonus bids, and a 12-1/2 percent royalty. Alternatively, the lessees may be assigned by one of the large energy companies which now holds them to another party which will then have the opportunity to develop the lease within ten years. The structure of such assignments, of course, is up to the two parties. Under the law, nothing prevents the assignor from entering into an agreement with the assignee for a portion of the profits from production on the lease, so an assignment certainly does not necessarily imply a financial loss for the present lessee. Also, new entrants into the western coal industry will be given the opportunity to acquire such leases at possibly very favorable terms. Far from being the catastrophe implied by statements from the coal industry, retention of Section 3 will have the beneficial effects of clearing up the uncertainty surrounding the disposition of hundreds of non-producing pre-FCLAA Federal coal leases, representing billions of tons of coal. Either the public will retrieve these leases, hopefully to be marketed in a prudent manner by the Interior Department, or they will be assigned to elements of the coal industry which have the wherewithal to put them into production.

Once again, thank you for the opportunity to comment on these proposals. Attached as appendices are our comments on the testimony presented at the October 18 hearing by the coal industry.

Sincerely,

David Alberswerth
Resource Specialist
Public Lands/Energy Division

APPENDIX I

MYTHS AND REALITIES: SELECTED ISSUES REGARDING THE PROPOSED REPEAL OF SECTION 3 OF FCLAA

The following comments pertain to statements made by some witnesses of the Senate Subcommittee on Energy and Mineral Resources hearing regarding S. 1634 on October 18, 1983:

1. "No one knows whether lease relinquishment or sale will eliminate a Section 3 problem." -- Richard Neyrey, Mobil Statement, 10/18/83, page 17 (hereafter "Mobil statement").

RESPONSE: It is clear from the plain language of the section that the prohibition on acquisition of future leases applies only to those who actually hold a lease in excess of 10 years without meeting diligence on it. If you are not actually holding such a lease, the sanctions do not apply.

2. "Section 3 is one of the most intricate and least understood provisions of FCLAA." -- Mobil statement, page 16.

RESPONSE: This is a somewhat subjective assessment, but in actuality, Section 3 is very straightforward and unambiguous: It means that if you HOLD a federal coal lease in excess of ten years without meeting diligence, you cannot obtain any other federal mineral leases. If you meet diligence, but cannot sustain production in commercial quantities thereafter, you may make payments in lieu of production in commercial quantities as provided in Section 7(b) and still obtain other federal mineral leases.

3. "Many unanswered questions have arisen regarding the obligations and liabilities of the federal coal lessee with respect to the production requirement itself, the imposition and removal of sanctions, lease exchange and transfer constraints, and the like." -- Mobil Statement, page 16.

RESPONSE: Nothing in this statement is very specific. It is simply a collection of vague generalities and assertions for which no specific instances are provided which demonstrate their validity.

4. "The ambiguities and uncertainties of what happens with an assignment of pre-1976 coal leases will undermine the ability to block up logical mining units of reserves through lease assignment." Mobil Statement, p. 16.

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RESPONSE: There is no ambiguity here at all. The assignee is obligated to develop the lease within ten years of obtaining it, or the sanctions apply. The period is not ten years from the date of enactment of FCLAA, but ten years from when the assignee received the lease.

5. "Despite the magnitude of Mobil's efforts, Section 3 could be applied in such a way that Mobil does not meet the Department of the Interior interpretation of 'commercial quantities' until after August 1986. Such interpretation has been ambiguous, but currently appears to require production of at least 1% of a federal lease's recoverable reserves, or about 4 million tons in Mobil's case." Mobil Statement, p. 24.

RESPONSE: Mobil, though ostensibly demonstrating how Sec. 3 could adversely affect its Rojo Caballo operation, instead proves that Section 3 is no problem for them. First of all, the definition of "commercial quantities" is not ambiguous at all, and is clearly defined at 30 CFR 378.302 [formerly] as follows:

> "Commercial Quantities" means one percent of the coal reserves or LMU coal reserves.

"Logical mining unit reserves" is defined in the same section as "the sum of estimated Federal and non-Federal coal reserves in the LMU." So, in the case of Mobil's operation, if we assume it is true that Mobil's LMU [if it has been so designated] contains 400 million tons of Federal and non-Federal coal, then, just as Mobil states, Mobil is required to produce 4 million tons by August 4, 1986.

And Mobil, by the evidence of its own testimony, can meet this requirement. According to Mobil:

> "Production at the Caballo Rojo Mine commenced in December 1982. In order to satisfy current contracts, Mobil will produce 1.4 million tons in 1983 with an average shipping of 10 unit trains per month. Mobil will produce about 2.0 million tons in 1984 at an average shipping rate of 14 unit trains per month. Because of the location of small tracts of privately owned coal within the federal coal lease and mine area, 3.2 million tons of production during the first several years will be from such private reserves." Mobil Statement, p. 23.

Simple arithmetic indicates that Mobil will be within .6 million tons of meeting diligence by the end of 1984, not counting the 3.2 million tons of production from private reserves which can, of course, also be counted toward meeting the diligence requirement. So it seems that even with no production from federal coal after 1984--an unlikely prospect--Mobil can meet the diligent development requirement by the combined production of its federal and private reserves.

6. "Congress passed Section 3 in part to eliminate speculation in coal reserves. I think it's fair to say that it has been effective in its original purpose. There is little or no evidence of attempted speculation in new leases, and for older leases (pre-1976) Section 3 will induce some leaseholders to relinquish their leases if they are not producing by 1986." -- Statement of John R. Hardin for Anaconda Minerals Company, 10/18/83, p. 2 (hereafter "Anaconda Statement").

RESPONSE: We concur with the interpretation, agree with the policy, and believe this statement aptly summarizes why Section 3 should not be repealed.

7. "To comply with Section 3, it's not just a matter of increasing production. Section 3 does not simply require that "x" amount of coal be mined; coal must be mined from each lease." Anaconda Statement, p. 3.

RESPONSE: Wrong. According to DOI's current definition of diligent development, 1% of "logical mining unit reserves" can be mined in order to meet diligence (see definition in RESPONSE #5 above), as acknowledged by Anaconda on page 4 of their statement. This necessitates the operator/lessee taking the initiative to apply to have an LMU designated by the Geological Survey under procedures detailed in 30 C.F.R. 211.80.

8. "If Section 3 is not changed and we are unable to comply we may have no choice but to relinquish the non-complying leases." Anaconda Statement, p. 3.

RESPONSE: There are actually a number of alternative options open to Anaconda in the remote eventuality that they choose to meet diligence under the terms of Section 3 for their Mt. Gunnison operation, among them: retaining these leases and being prohibited from obtaining future leases; selling these leases to another company; selling the leases to another company and entering into a contractual arrangement whereby Anaconda markets the coal; incorporating all lease tracts together into an LMU and meeting the diligence requirements; mining enough coal from the LMU to meet diligence and storing it until it is sold (if there is no current market for it).

9. LMU formation is "undesirable." Anaconda Statement, p. 4.

RESPONSE: As Anaconda notes, LMU's have been formed since 1976. The current definition of LMU by DOI effectively liberalized the diligent development requirements on behalf of companies like Anaconda. Though it may be so that the Department and Anaconda have "no clear understanding of all the potential ramifications surrounding creation and operation of an LMU," in the absence of a more definitive explanation of the drawbacks of LMU formation to deal with the problem, Anaconda doesn't have much of a case here. Life is full of uncertainties for all of us, but the current definition of LMU was the Interior Department's little gift to the coal industry in order to eliminate some of the possible uncertainty associated with meeting the diligent development requirements of the Mineral Leasing Act.

As for the 40-year mine-out requirement for LMUs, this, of course, is a separate issue, addressed in Section 5 (a) of FCLAA. Given the fact that Anaconda began mining at the Mt. Gunnison operation in 1982, the company has until 2022 to meet the 40-year mine-out requirement. One option for adjustment would be to adjust the boundaries of the LMU in the future to accommodate the changing mining operation.

10. Anaconda complains about the fact of a 40 acre federal tract in its Thunder Basin mine which won't be mined until 2009, saying that it is evidence of the ludicrousness of Section 3 as it applies to existing mining operations. Anaconda Statement, pp. 4-5.

RESPONSE: Since the 40 acre parcel in question has apparently been incorporated by Anaconda into its mine plan already, it is evident that the way around this "problem" is to form an LMU which includes the 40 acre parcel.

11. There is an anomaly between the Department's regulations governing diligence--which give pre-FCLAA lessees until 10 years after the first lease readjustment to meet dilgence--and Section 4, therefore Section 3 is unfair. Anaconda Statement, p. 5.

RESPONSE: Until July 30, 1982 (the date of publication of the current diligence rules) Section 3 and the Department's rules were complimentary, and also in harmony with FCLAA's directive that all leases meet diligence within ten years. As such, Section 3 was an enforcement provision. However, with the Department's relaxation of the diligence requirements last year (the old rules having required that all pre-FCLAA leases meet diligence in 1986), the Department, at the behest of the coal industry, created the anamoly. The Department's ill-advised rules change is not a sufficient reason to repeal Section 3, which more accurately reflects Congressional intent regarding diligent development than the Department's new rules.

12. Mr. Perry refers to the assumption that in passing Section 3 Congress was concerned about "unincorporated individuals and small coal companies" who were "so-called 'speculators'". Statement of Harry Perry, October 18, 1983, p. 1. (hereafter, "Perry statement")

RESPONSE: In fact, it is some of the larger coal companies, such as Consol and Peabody who are this decades' speculators. It is true that "unincorporated individuals and small companies" were involved in speculating on leases in the past, but just because a company is in the Fortune 500 does not mean it is immune from the lucrative temptations of speculating on Federal coal leases.

13. "...[M]ost firms in a position technically and financially to provide the large capital to develop a western coal mine either already own coal leases... or would be unwilling to acquire these leases that would, if not developed, prevent them from bidding on other federal mineral leases." Perry statement, p. 2.

RESPONSE: This is an incorrect interpretation of Sec. 3. See RESPONSE #4 above

14. There is a discussion on pp. 3-4 of the Perry statement about the fact that existing leaseholders are the ones who bid on the new (post-1976) leases. It is unclear what the significance of this fact is. However, it is worth pointing out that if some of these lessees are prevented from bidding in future lease sales due to Section 3 restrictions, the effect would be to open the market for these leases to new entrants. It is also interesting to note Mr. Perry's admission that competition for new leases has been weak. This argues for lower leasing levels in new lease sales.

15. "It is apparent that Section 3 leaseholders are the key to maintaining effective competition for lease sales of federal resources. Should these leaseholders be unwilling to face the economic penalties of giving up their pre-1976 coal leases (rather than developing them) then the receipts from sales of federal resources would be seriously depressed." Perry statement, p. 3.

RESPONSE: Facing the penalties of Sec. 3, chances are that those who hold these leases and have not been developing them will rid themselves of them either by relinquishment or assignment, rather than forego the opportunity to obtain leases in the future.

16. Mr. Perry points out on page 4 that if all the "Section 3 leases" were put into production by 1986, we would see an over-capacity of 120 million tons.

RESPONSE: This statement argues for lower leasing levels in the future. Also, it is only one, very unlikely scenario, that could occur. A more likely scenario is that companies which aren't close to development will divest themselves of their pre-1976 leases.

17. "On the other hand, if they [the "Section 3 leaseholders"] decide to relinquish their leases to avoid the penalties of Section 3, then in the later half of the 1980's and 1990's there could be a serious shortage of western coal to meet electric utility and other demands for coal..." Perry statement, page 4.

RESPONSE: The coal reserves in question are not going to get up and walk away if the pre-1976 lessees give them up. Instead, they will be available either for re-issuance as new leases if returned to the government, or developed if assigned to someone else. The coal industry, as Mr. Perry points out in a recent article ("Coal in the United States: A Status Report," Science, vol. 222, Number 4622, October 28, 1983, p. 384), is "demand constrained" rather than "supply constrained." This is now and always has been a basic fact about the U.S. coal industry.

18. On page 5 of his statement, Mr. Perry argues that 10 years is too short a time for diligent development to take place, although his own statement seems to indicate that 7 years is enough time. In any event, if indeed 10 years is not enough time (a presumption which has yet to be demonstrated), this argues for some type of payment-in-lieu-of-diligence provision, vis-a-vis Section 7, not repeal of Section 3. Also, the Section 4 lessees have held their leases for far longer than 10 years--20 years by 1986 is the general rule of thumb.

19. On page 5 Mr. Perry introduces a pro-consumer argument for repeal of Section 3. It is not established elsewhere in Mr. Perry's statement that consumers will suffer higher costs if Section 3 is not repealed. In fact, since his statement

indicates that if all pre-1976 leases were brought into development by 1986 we would see a 120 million ton overcapacity, it would seem that this would imply that consumer costs would be lowered--as they usually are in a glutted market.

20. "Failure to repeal Section 3 will... result in large negative impacts on Federal reserves and the income of those states most directly involved in the development of Federal energy and mineral resources." Statement of Richard M. Holstein for NCA/AMC, October 18, 1983 (hereafter "NCA statement"), p. 2.

RESPONSE: The assertion is unsupported by any factual analysis. It is interesting to note that the governors of the western states have consistently supported strong diligent development requirements for federal leases, and do not support repeal of Section 3.

21. "But, ultimately, Section 3 repeal is a consumer issue in that failure to repeal it will ultimately decrease competition in the coal industry and raise costs, which will be reflected in the nation's energy bills." NCA statement, p. 2.

RESPONSE: This is another unsupported assertion. Also, see our response #19 above.

22. NCA characterizes speculators as "that small group of individuals who in the 50's and 60's were able to selectively accumulate fairly substantial Federal coal holdings" cheap. NCA statement, p. 3.

RESPONSE: In fact, these activities were engaged in by companies such as Consol and Peabody as well, companies which continue to hold large numbers of coal leases (over 30 in the case of Consol) but have no development plans for them.

23. "The coal lease speculator is gone." NCA statement, p. 3.

RESPONSE: Wrong.

24. "It is this lease base--the roughly 16 billion tons of coal leased prior to the 1976 Coal Leasing Amendments Act--that is directly threatened by Sec. 3." NCA statement, p. 7.

RESPONSE: The lease reserves aren't "threatened" by Sec. 3, but some leaseholders are, if they don't develop them, assign them to somebody who will, or return them to the government.

25. "It was recognized in 1976 that the provision requiring production from these leases in 10 years was totally arbitrary and bore little relationship with the real world of mining and marketing large coal reserves." NCA statement, p. 7.

RESPONSE: Who recognized this? Perhaps the NCA felt this way in 1976, but did Congress?

26. On pages 8 and 9 of the NCA statement, there is a description of the effect on competition for coal contracts if Sec. 3 remains in effect. The assumptions that this analysis is based upon are not supplied in the statement, but it appears that one basic assumption is that all non-producing Section 3 leases will be relinquished to the government. However, this consequence of non-repeal is unlikely to happen. There are numerous options open to companies who have Sec. 3 leases, among them: developing the lease; keeping the lease undeveloped and suffering the penalties of Sec. 3; and assigning leases to other parties, who will have ten years in which to develop them. Also, there seems to be the assumption that once a lease is relinquished to the government, it is gone forever, i.e., somehow it is out of the reserve base. This, of course, is not true. The government can reissue these leases, perhaps even redesigning lease tracts. Furthermore, these reissued leases will have a 12-1/2 percent royalty rate requirement, as well as bonus requirements. This means that the government will be able to capture a better rate of return than it currently has for these old leases, which in many cases will only bring 15¢ to 20¢ per ton when developed.

DEFINITIONS

§ 378.302 -- (46 F.R. 62235 (December 22, 1981))

"Commercial Quantities" means one percent of the coal reserves or LMU coal reserves."

"'Coal Reserves' means the tons of coal that can be mined commercially under existing technology and economics..."

"'LMU Coal Reserves' means the sum of estimated Federal and non-Federal coal reserves in the LMU..."

"'Continued Operation' means the production of not less than commercial quantities of coal in each of the first two continued operation years following the achievement of diligent development and an average amount of not less than commercial quantities of coal per continued operation year thereafter, computed on a three-year basis consisting of the continued operation in question and the two preceding continued operation years."

"Continued Operation Year" means the 12-month period beginning with the commencement of the first royalty reporting period following the achievement of diligent development, and each 12-month period thereafter."

"LOGICAL MINING UNITS"

Logical Mining units, and their designation by the operator/lessee, are discussed at 30 CFR 211.80, which also lays out the procedures, in detail, for operators/lessees to have them designated by the Interior Department. (See 47 F.R. 33193, July 30, 1983) (attached)

SELECTED TOPICS

For purposes of questions that have arisen about the effect of Sec. 3 of FCLAA:

1. The ten-year period for lease assignments begins on the date of the assignment, not from the date the lease was issued to the original lessee, or the date of enactment of FCLAA.

2. After diligence is met during the first ten years, no penalties accrue to the lessee if payments in lieu of production are made under Sec. 7(b) of FCLAA, as is clearly stated in Sec. 3.

3. The calculation of production in commercial quantities is based upon the total amount of reserves in an LMU, including non-Federal reserves. Production from non-Federal reserves is also counted toward compliance with the diligent development requirements.

4. An LMU can be designated upon application by the operator/lessee under procedures found at 30 C.F.R. 211.80. These procedures are spelled out in detail in the regulations.

or otherwise disposed of, and all coal in storage (remaining in inventory).

(2) The prices received for all coal sold and to whom and when sold.

(b) The District Mining Supervisor and the Associate Director for Royalty Management shall have access to all records of the operator/lessee pertaining to compliance with Federal lease terms relating to Federal royalties, including, but not limited to:

(1) Qualities and quantities of all coal mined, processed, sold, delivered, or used by the operator/lessee.

(2) Prices received for mined or processed products, prices paid for like or similar products, and internal transfer prices.

(3) Costs of mining, processing, handling, and transportation.

(c) Licensees must maintain a current record of all coal mined and/or removed.

(d) Operators/lessees will retain these records for a period of time as determined by the District Mining Supervisor and the Associate Director for Royalty Management in accordance with current MMS rules and procedures.

§ 211.67–§ 211.69 [Reserved]

§ 211.70 Inspections.

(a) The operator/lessee shall provide access, at all reasonable times, to the District Mining Supervisor for inspection or investigation of operations in order to determine whether the operations are in compliance with all applicable laws, rules, and orders; the terms and conditions of the Federal lease or license; and requirements of any approved exploration plan for:

(1) Abandonment.

(2) Environmental protection and reclamation practices.

(b) The operator/lessee shall provide access, at all reasonable times, to the District Mining Supervisor or the Associate Director for Royalty Management for inspection or investigation of operations in order to determine whether the operations are in compliance with all applicable laws, rules, and orders; the terms and conditions of the Federal lease or license; and requirements of any approved resource recovery and protection plan for:

(1) Production practices.

(2) Development.

(3) Resource recovery and protection.

(4) Diligent development and continued operation.

(5) Audits of Federal rental and royalty payments on producing Federal leases.

(6) Abandonment.

(7) MER determinations.

§ 211.71 Notices and orders.

(a) *Address of responsible party.* Before beginning operations, the operator/lessee shall inform the District Mining Supervisor in writing of the operator/lessee's post office address and the name and post office address of the superintendent or designated agent who will be in charge of the operations and who will act as the local representative of the operator/lessee. Thereafter, the District Mining Supervisor shall be informed of any changes.

(b) *Receipt of notices and orders.* The operator/lessee shall be construed to have received all notices and orders that are mailed by certified mail, return receipt requested, to the mine office or handed to a responsible official connected with the mine or exploration site for transmittal to the operator/lessee or his local representative.

§ 211.72 Enforcement.

(a) If the District Mining Supervisor determines that an operator/lessee has failed to comply with the rules of this Part, the terms and conditions of the Federal lease or license, the requirements of approved exploration or resource recovery and protection plans, or orders of the District Mining Supervisor, and such noncompliance does not threaten immediate and serious damage to the mine, the deposit being mined, valuable ore-bearing mineral deposits or other resources, or affect the royalty provisions of the rules of this Part, the District Mining Supervisor shall serve a notice of noncompliance upon the operator/lessee by delivery in person to him or his agent, or by certified mail, return receipt requested, addressed to the operator/lessee at his last known address. Failure of the operator/lessee to take action in accordance with the notice of noncompliance within the time limits specified by the District Mining Supervisor shall be grounds for cessation of operations upon notice by the District Mining Supervisor. The District Mining Supervisor may also recommend to the authorized officer the initiation of action for cancellation of the Federal lease or license and forfeiture of any Federal lease bonds.

(b) The notice of noncompliance shall specify in what respect(s) the operator/lessee has failed to comply with the rules of this Part, the terms and conditions of the Federal lease or license, the requirements of approved exploration or resource recovery and protection plans, or orders of the District Mining Supervisor, and shall specify the action that must be taken to correct such noncompliance and the time limits within which such action must be taken.

(c) If, in the judgment of the District Mining Supervisor, an operator/lessee is conducting activities which fail to comply with the rules of this Part, the terms and conditions of the Federal lease or license, the requirements of aproved exploration or resource recovery and protection plans, or orders of the District Mining Supervisor, and/or which threaten immediate and serious damage to the mine, the deposit being mined, valuable ore-bearing mineral deposits, or, regarding exploration, the environment, the District Mining Supervisor shall order the immediate cessation of such activities without prior notice of noncompliance.

(d) A written report shall be submitted by the operator/lessee to the District Mining Supervisor when such noncompliance has been corrected. Upon concurrence by the District Mining Supervisor that the conditions which warranted the issuance of a notice or order of noncompliance have been corrected, the District Mining Supervisor shall so notify the operator/lessee in writing.

(e) The District Mining Supervisor shall enforce requirements of SMCRA only if he finds a violation, condition, or practice that he determines to be an emergency situation for which an authorized representative of the Secretary is required to act pursuant to 30 CFR 843.11 and 30 CFR 843.12.

§ 211.73 Appeals.

Decisions or orders issued by MMS under 30 CFR 211 may be appealed pursuant to 30 CFR Part 290, except that decisions or orders issued by the District Mining Supervisor under 30 CFR 211.72(e) are subject to appeal pursuant to 43 CFR Part 4.

§ 211.74–§ 211.79 [Reserved]

§ 211.80 Logical mining units.

(a) *General.* An LMU shall become effective only upon approval by the District Mining Supervisor. An LMU may be enlarged by the addition of other Federal coal leases or with interests in non-Federal coal deposits, or both, in accordance with 30 CFR 211.80(g). An LMU may be diminished by creation of other separate Federal leases or LMU's, in accordance with 30 CFR 211.80(g).

(b) The District Mining Supervisor may direct, or an operator/lessee may initiate, the establishment of an LMU containing only Federal coal leases issued after August 4, 1976. The District Mining Supervisor may direct, or an operator/lessee may initiate, the establishment of an LMU containing

Federal coal leases issued prior to August 4, 1976, provided that the operators/lessees consent to making all such Federal leases within the LMU subject to the uniform requirements for submittal of a resource recovery and protection plan, LMU recoverable coal reserves exhaustion, diligent development, continued operation, MER, advance royalty, and royalty reporting periods (but not royalty rates) made applicable by the LMU stipulations and the rules of this Part. Any Federal lease included in an LMU shall have its terms amended as necessary so that its terms and conditions are consistent with the stipulations required for the approval of the LMU pursuant to 30 CFR 211.80(e).

(c) *Contents of an LMU application.* An operator/lessee must submit five copies of an LMU application to the District Mining Supervisor if the operator/lessee is applying on his own initiative to combine lands into an LMU, or if directed to establish an LMU by the District Mining Supervisor in accordance with 30 CFR 211.80(b). Such application shall include the following:

(1) Name and address of the designated operator/lessee of the LMU.

(2) Federal lease serial numbers and description of the land and all coal beds considered to be of minable thickness within the boundary of the LMU. Identification of those coal beds proposed to be excluded from any Federal lease which would be a part of the LMU.

(3) Documents and related information supporting a finding of effective control of the lands to be included in the LMU.

(4) Sufficient data to enable the District Mining Supervisor to determine that MER of the Federal recoverable coal reserves will be achieved by establishment of the LMU. If a coal bed, or portion thereof, is proposed not to be mined or to be rendered unminable by the operation, the operator/lessee shall submit appropriate justification to the District Mining Supervisor for approval.

(5) Any other information required by the District Mining Supervisor.

(6) If any confidential information is included in the submittal and is identified as such by the operator/lessee, it shall be treated in accordance with 30 CFR 211.6.

(d) *Consultation.* (1) Prior to approval, the District Mining Supervisor shall consult with the operator/lessee about any Federal recoverable coal reserves within the LMU that the operator/lessee does not intend to mine and any Federal recoverable coal reserves that the operator/lessee intends to relinquish. The District Mining Supervisor shall also consult with the operator/lessee about Federal lease revisions to make the time periods for resource recovery and protection plan submittals, the 40-year LMU recoverable coal reserves exhaustion requirement, and diligent development, continued operation, advance royalty and Federal rental and royalty collection requirements applicable to each producing Federal lease consistent with the LMU stipulations.

(2) The public participation procedures of 30 CFR 211.5 shall be completed prior to approval of an LMU.

(e) *Stipulations.* Prior to the approval of an LMU, the District Mining Supervisor shall notify the operator/lessee and authorized officer of stipulations required for the approval of the proposed LMU. The LMU stipulations shall provide for:

(1) The submittal, within 3 years from the effective date of LMU approval, of a resource recovery and protection plan that contains the information required by 30 CFR 211.10(c) for all Federal and non-Federal lands within the LMU.

(2) A schedule for the achievement of diligent development and continued operation for the LMU. The schedule shall reflect the date for achieving diligent development and maintaining continued operation of the individual Federal leases included in the LMU, consistent with the rules of this Part. An operator/lessee may request to pay advance royalty in lieu of continued operation in accordance with 30 CFR 211.25.

(3) Uniform reporting periods for Federal rental and royalty on Federal leases.

(4) The revision, if necessary, of terms and conditions of the individual Federal leases included in the LMU. The terms and conditions of the Federal leases, except for Federal royalty rates, shall be amended so that they are consistent with the stipulations of the LMU.

(5) Estimates of the Federal LMU recoverable coal reserves, and non-Federal LMU recoverable coal reserves, using data acquired by generally acceptable exploration methods.

(6) Beginning the 40-year LMU recoverable coal reserves exhaustion requirement on the date that coal is first produced from the LMU, after LMU approval, as determined during the first royalty reporting period following such date.

(7) Any other condition that the District Mining Supervisor determines to be necessary for the efficient and orderly operation of the LMU.

(f) *Criteria for approving the establishment of an LMU.* The District Mining Supervisor shall, except for good cause stated in a decision disapproving the application, approve an LMU if it meets the following criteria:

(1) The LMU fully meets the LMU definition.

(2) Mining operations on the LMU will achieve MER of Federal recoverable coal reserves within the LMU. A single operation may include a series of excavations.

(3) All single Federal leases that are included in more than one LMU shall be segregated into two or more Federal leases. If only a portion of a Federal lease is included in an LMU, the remaining land shall be segregated into another Federal lease. The District Mining Supervisor will consult with the authorized officer about the segregation of such Federal leases. The operator/lessee may apply to relinquish any such portion of a Federal lease under 43 CFR 3452.1.

(4) The operator/lessee has agreed to the LMU stipulations required by the District Mining Supervisor for approval of the LMU.

(5) The LMU does not exceed 25,000 acres, including both Federal and non-Federal lands.

(g) *Modification of an LMU.* (1) The boundaries of an LMU may be modified either upon application by the operator/lessee and approval of the District Mining Supervisor after consultation with the authorized officer, or by direction of the District Mining Supervisor after consultation with the authorized officer. In accordance with 30 CFR 211.11(a)(3), the District Mining Supervisor may adjust only the estimate of LMU recoverable coal reserves pursuant to departmental actions or orders that modify the LMU boundaries, or upon approval of an operator/lessee application.

(2) Upon application by the operator/lessee, an LMU may be enlarged by the addition of other Federal coal leases or with interests in non-Federal coal deposits, or both. The LMU boundaries may also be enlarged as the result of the enlargement of a Federal lease in the LMU, pursuant to 43 CFR 3432. An LMU may be diminished by creation of other separate Federal leases or LMU's or by the relinquishment of a Federal lease or portion thereof, pursuant to 43 CFR 3452.

(3) In considering an application for the modification of an LMU, the District Mining Supervisor shall consider modifying the LMU stipulations, including the production requirement for commercial quantities.

(4) Pursuant to 30 CFR 211.80(e), the 40-year mine-out period for an LMU shall not be extended as the result of the enlargement of an LMU or as the result

of the revision or amendment of a resource recovery and protection plan.

(h) *Administration of LMU operations.* An LMU shall be administered in accordance with the following criteria:

(1) Where production from non-Federal lands in the LMU is the basis, in whole or in part, for satisfaction of the requirements for diligent development or continued operation, the operator/lessee shall provide a certified report of such production, as determined by the District Mining Supervisor. The certified report shall include a map showing the area mined and the amount of coal mined.

(2) *Diligent development, continued operation and advance royalty.* Operators/lessees must comply with the diligent development, continued operation, and advance royalty requirements contained at 30 CFR 211.20 through 30 CFR 211.25.

(3) Operators/lessees must comply with the LMU stipulations.

§ 211.81–§ 211.99 [Reserved]

§ 211.100 [Reserved]

§ 211.101 Audits.

An audit of the accounts and books of operators/lessees for the purpose of determining compliance with Federal lease terms relating to Federal royalties may be required annually or at other times as directed by the Associate Director for Royalty Management. The audit shall be performed by a qualified independent certified public accountant or by an independent public accountant licensed by a State, territory, or insular possession of the United States or the District of Columbia, and at the expense of the operator/lessee. The operator/lessee shall furnish, free of charge, duplicate copies of audit reports that express opinions on such compliance to the Associate Director for Royalty Management within 30 days after the completion of each audit. Where such audits are required, the Associate Director for Royalty Management will specify the purpose and scope of the audit and the information which is to be verified or obtained.

§ 211.102 Late payment or underpayment charges.

(a) The failure to make timely or proper payment of any monies due pursuant to leases and contracts subject to these regulations will result in the collection by the Minerals Management Service (MMS) of the full amount past due plus a late payment charge. Exceptions to this late payment charge may be granted when estimated payments on minerals production have already been made timely and otherwise in accordance with instructions provided by MMS to the payor. However, late payment charges assessed with respect to any Indian lease, permit, or contract shall be collected and paid to the Indian or tribe to which the amount overdue is owed.

(b) Late payment charges are assessed on any late payment or underpayment from the date that the payment was due until the date on which the payment is received in the appropriate MMS accounting office. Payments received after 4 p.m. local time on the date due will be acknowledged as received on the following workday.

(c) Late payment charges are calculated on the basis of a percentage assessment rate. In the absence of a specific lease, permit, license, or contract provision prescribing a different rate, this percentage assessment rate is prescribed by the Department of the Treasury as the "Treasury Current Value of Funds Rate."

(d) This rate is available in the Treasury Fiscal Requirements Manual Bulletins that are published prior to the first day of each calendar quarter for application to overdue payments or underpayments in the new calendar quarter. The rate is also published in the Notices section of the Federal Register and indexed under "Fiscal Service/Notices/Funds Rate: Treasury Current Value."

(e) Late payment charges apply to all underpayments and payments received after the date due. These charges include production, minimum, or advance royalties; assessments for liquidated damages; or any other payments, fees, or assessments that a lessee/operator/payor is required to pay by a specified date. The failure to pay past due payments, including late payment charges, will result in the initiation of other enforcement proceedings.

§ 211.103–§ 211.999 [Reserved]

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